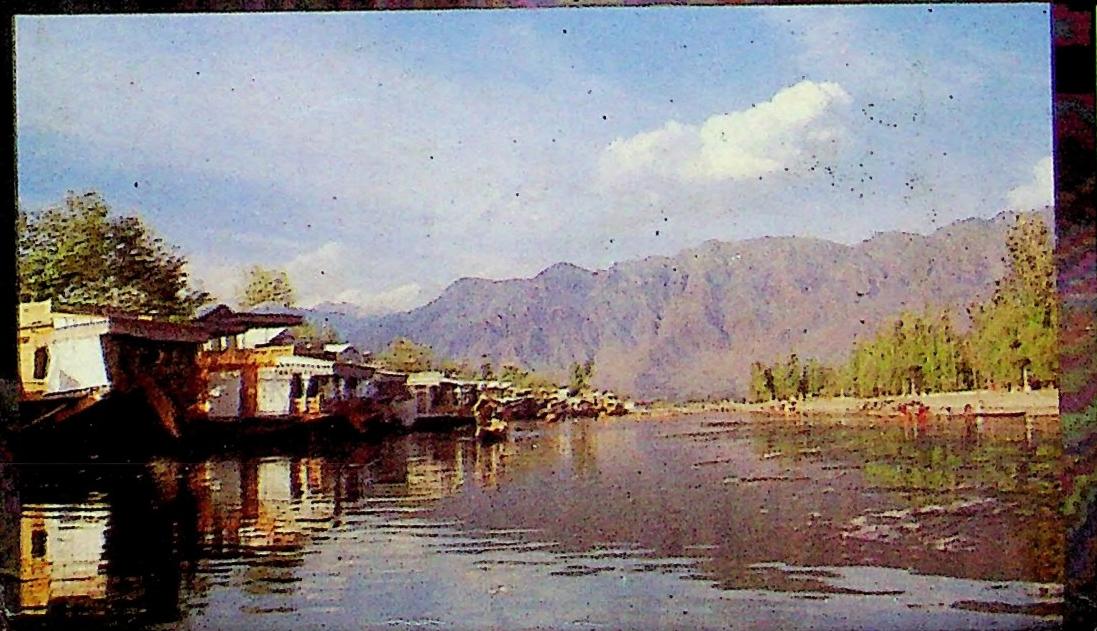


JAMMU AND KASHMIR

**Article 370 of the
Constitution of India**

K.L. BHATIA



Perceptibly, the Constitutional nicety tells that Article 370 of the Constitution of India, at the present, stands on the cross roads of confrontationist approach between political as well as emotional predicaments and Constitutional convivialities. The contentious notoriety of political and emotional aspects has made the ongoing debate on Article 370 too knotty to seek for an helping hand to bring it out from the self woven cobweb. Its retention in the *supreme lex* may be a political compulsion; its deletion or abrogation from the *supreme lex* may be a political necessity. Be that as it may, the constitutional legal imperatives of the debate alone necessitate and to move on those assumptions which need heuristic verification or refutation thus evolving a *de novo* constitutional politics, *viz.*, Does Article 370 suffer from the banishment of principles or the folly, shortsightedness, or wickedness of man?; Does not the retention of Article 370 permeate the feelings of alienation, or disintegration, or disunity thus affecting the very fabric of the trinity of the social justice avowed in the Constitution of India?; Should the temporary or transitory provision of the Constitution be allowed to perpetuate thus perpetuating alienation?; Does its mode, manner as well as language not affect the constitutional culture, constitutional morality—textually and contextually both?; Does its process not destroy the basic structure of the Constitution itself?; Does it not send the signal of vice of artificiality?; Does the plea of its entrenchment not lead to the erosion of the constitutional avowed mandate, i.e. weakening the constitutional promise of trinity—"fraternity, unity and integrity"?

These are some of the problematic constitutional issues in the arena of ongoing debate on Article 370; there may be many more issues. These issues, indeed, call for an indepth examination for having unshakeable insights. However, these legal issues, unequivocally, tell that its deletion or retention should no longer be the domain of any political ideology, but the political elites must now take a realistic or pragmatic, and not escapist, vision of the whole gamut of the problem. Such a perception alone would yield a plausible solution to this knotty problem.

(10)

मानवीय संस्कृति
भी वा एक इनिय

प्रमाण

गोरक्षा पुस्तकालय
(संजीवनी प्राप्ति केंद्र)
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JAMMU AND KASHMIR:
ARTICLE 370 OF THE CONSTITUTION OF INDIA

"A very useful exposition on a sensitive issue."

— V. Aivalli

JAMMU AND KASHMIR:
ARTICLE 370
OF
THE CONSTITUTION OF INDIA

शारदा पुस्तकालय
(संगीतनी शास्त्र केन्द्र)
काशी ३७४

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DEEP & DEEP PUBLICATIONS
F-159, Rajouri Garden, New Delhi-110027

ISBN 81-7100-980-8

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Laser Typeset by LASER DOT,
J-102, Sector 25, Noida-201301

Printed in India at Elegant Printers,
A 38/2, Mayapuri, Phase I, New Delhi-110064

Published by DEEP & DEEP PUBLICATIONS,
F-159, Rajouri Garden, New Delhi-110027
Phones : 5435369, 5440916

उत्तरं पत्समुद्रस्य हिमाद्रेच्छैव दक्षिणम् ।
वर्षं तद्वारतं नाम भारती यत्र सन्ततिः ॥

The country which lies to the south of the Himalayas and
the north of the ocean is called Bharata and the
Bharateeyas are the people of this country.

— *Vishnu Puran, Ch. 3-1*

I know what you want me
to do, you know you must be

and you know I have to make up my mind now, and
you know you must be right, and you know
you know I have to keep up with the competition.

100% profit, New York

100% profit, New York
100% profit, New York
100% profit, New York

100% profit, New York
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100% profit, New York
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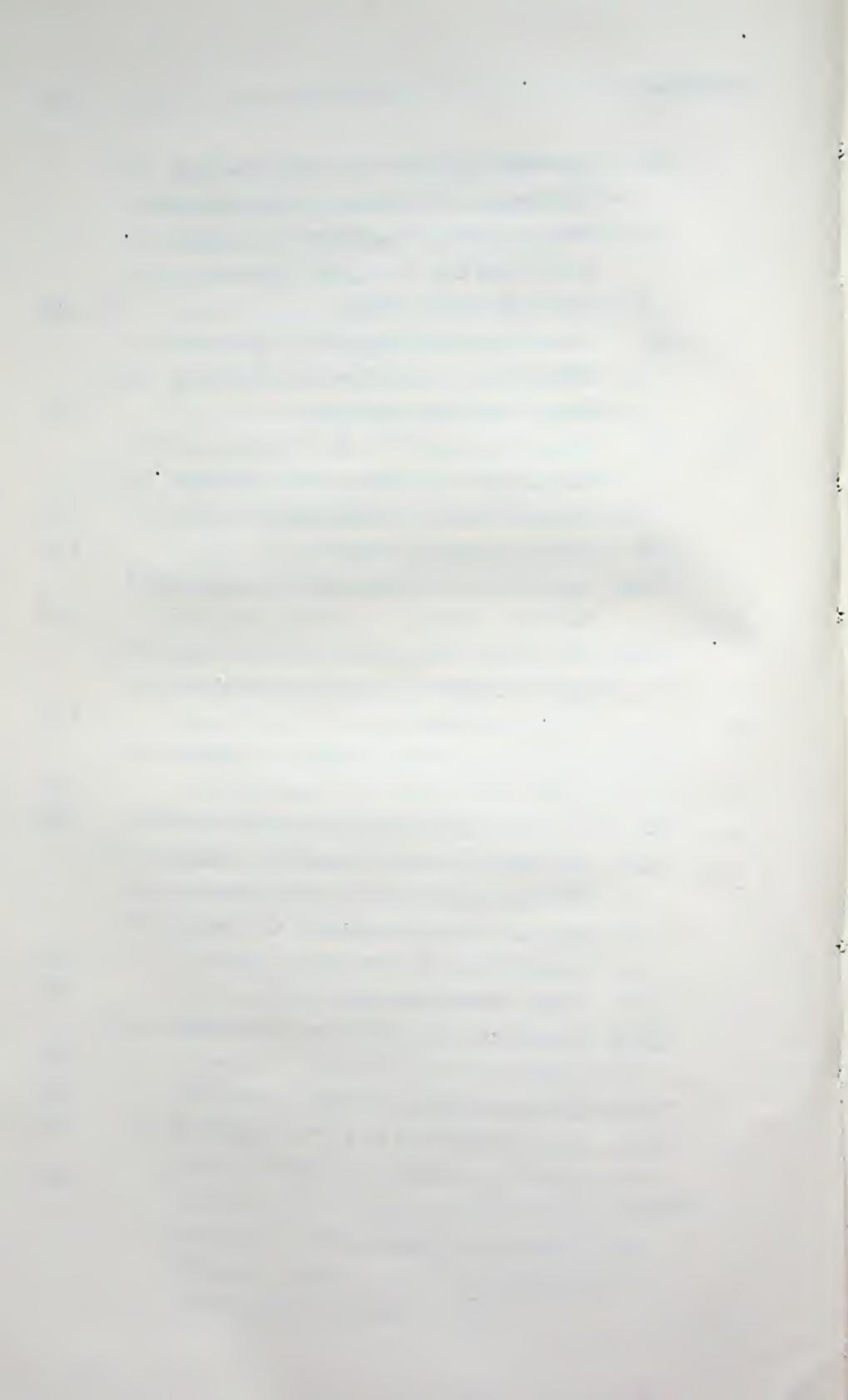
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Preface

Clamour for pre-1953 or autonomy are two faces of the same coin, because it intends to be a "mistress in her own house". The aspiration for pre-1953 position or autonomy is incompatible with the Constitution of India. The constitutional culture, the constitutional morality, and the constitution politics envisages the spirit of cooperative federalism which requires proper understanding and mutual confidence between the Union and her Units (States). The constitutional scheme aims at co-operative as well as coordinative federalism with checks and balances, and as such the demand appears to be retrogradation of the constitutional fabric so well outlined. Constitution neatly lays down the division of powers between the Centre and the States wherein adequate safeguards of autonomy as well as interdependence have been outlined, and this scheme of mutual dependence as well as coordination aims at cooperative federalism.

At the outset it becomes imperative to examine the incompatibility of autonomy with the Constitution of India. The Autonomy Committee appointed by the State government has three terms of reference to examine, namely,

Instrument of Accession, 1947, The Constitutional Application Order, 1950, and the Delhi Agreement, 1952. The incompatibility has to be examined *vis-a-vis* the *locus standi*. The State government has no power to appoint an autonomy committee to examine the terms of references even under the provisions of Articles 258 and 258A. The matter ought to have been referred to the Supreme Court of India under Article 131 who has the original jurisdiction to resolve dispute(s) between the Centre and the State(s) if and insofar as the dispute involves any question (whether of law or facts) on which the existence or extent of a legal right depends. Or, the disputant matter ought to have been a subject-matter for the Inter-State Council under Article 263. The State action seems to affect the basic structure of the Constitution of India. Federal structure has been pronounced to be the basic structure of the Constitution of India and that cannot be changed even by an amendment to the Constitution of India (Keshavananda Bharati's case and the subsequents).

The question of Instrument of Accession, 1947 cannot be reopened for examination, because the accession of Indian States was exercised under the schemes enjoined under Sections 5 and 6 of the Government of India Act, 1935 as well as Section 7 of the Indian Independence Act, 1947 and Section 6 of the India (Provisional Constitution) Order, 1947, and these laws are no longer the part of Indian Statutory Books as they stand repealed under the provisions of Article 395 of the Constitution of India. Thus, the accession is irrevocable and beyond the scope as well as jurisdiction of the Committee.

The reference of Constitutional Application Order, 1950, again, seems to an act of artificiality as well as teasing illusion, because the Constitutional Application Order, 1954 was issued to come into force on the fourteenth

day of May, 1954 and shall thereupon supersede the Constitutional Application Order, 1950. Thus, 1950 Order is redundant, and a dead issue is no issue.

Further, the re-visit to Delhi Agreement, 1952 would be irrelevant because it paved the way for the Constitutional Application Order, 1954. It would be incompatible to reopen the final resolved issue, and as such it would be retrograde to the constitution wedlock between the Union and the State.

As a conscientious citizen of India, I have endeavoured to redeem the future of Indian democracy by analysing the constitutional as well as legal issues appertaining to Article 370 of the Constitution of India, and making a campaign for law reform. I am conscious that my perceptions to the analysis of Article 370 may be stirring to many as these may be different from the perceptions of many more scholars/thinkers who may redeem for its change/deletion but may not be votary for the same because of their compulsions as well as ideological inaptitude or bankruptcy.

Reference to Muslim brethren in this monograph may not be construed in general, but it is a reference to those who owe loyalties across the borders; who have seldom shown reverence to the Mother Land "Bharat"; who continue to advocate as well as propagate those notions which are anti-national and anti-social. This monograph as such addresses itself to give a direction to the directionless and strives to inculcate the national feelings amongst those who are generally swayed by populism and unable to appreciate the constitutional perspective of Article 370. I shall feel amply rewarded if this study proves a guidance as well as an eye-opener to those who are just carrying a myopic vision of the irrevocable bond of Jammu-Kashmir State with the Indian Union.

I have appended heavy appendices to this tiny write up with a sole objective to arrive at a logical conclusion of

my thesis that Article 370 is against the basic structure of the Indian Constitution. Be that as it may, through feelings we may gain self-insight, tap our creative powers, deepen and enrich our relationship with others in the future, if not today. I may thus conclude with the striking words of Ms. Annie Besant (in a foreword to J. Krishnamurthy's "The Kingdom of Happiness") "The wise will prize it, the otherwise will do as they please".

I felt encouraged when a good friend recorded his impressions after going through the MSS that "it is a nice exposition on a very sensitive issue". My special thanks to my friend Shri Veeranna Aivalli, Additional DGP.

I am extremely beholden to all my friends who have made critical contributions in the successful culmination of this monograph and, thus, a source of inspiration, viz., Late Shri Radha Krishna Sharma, Shri Indresh Kumar, Shri Shadi Lal Sharma, Dr. Gurdeep Singh, Dr. Jagmohan Singh, and library staff of Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany.

I am immensely grateful to my wife Smt. Veena Bhatia, son Summet and daughter Manu who have always been sacrificing for the time which otherwise sociologically is theirs. But for their inspiration, this work could not have seen the light of the day.

My thanks to Shri G.S. Bhatia of Deep & Deep Publications, New Delhi who has taken keen interest to bring out the publication of this write up timely as well as neatly.

Jammu

K.L. BHATIA

1

Introduction

Perceptibly, the constitutional nicety tells that Article 370 of the Constitution of India, at the present, stands on the cross roads of confrontationist approach between political as well as emotional predicaments and constitutional convivialities. The contentious notoriety of political and emotional aspects has made the ongoing debate on Article 370 too knotty to seek for an helping hand to bring it out from the self-woven cobweb. Its retention in the *supreme lex* may be a political compulsion; its deletion or abrogation from the *supreme lex* may be a political necessity. Be that as it may, the constitutional legal imperatives of the debate alone necessitate one to move on those assumptions which need heuristic verification or refutation thus evolving a *de novo* constitutional culture, constitutional morality, and constitutional politics, *viz.*, does Article 370 suffer from the banishment of principles of folly, short-sightedness, or wickedness of men?; does not the retention of Article 370

permeate the feelings of alienation or disintegration or disunity thus affecting the very fabric of the trinity of social justice avowed in the Constitution of India?; should the temporary or transitory provision of the Constitution be allowed to perpetuate thus perpetuating alienation?; does its mode, manner and language not affect the constitutional culture, constitutional morality ... textually and contextually both?; does its process not destroy the basic structure of the Constitution itself?; does it not send the signal of vice of artificiality?; does it inculcate jealous feeling that Article 370 by giving special constitutional status to the State of Jammu and Kashmir creates more autonomy in favour of that State and less autonomy in case of the rest of the States of Indian Union?; it is only on account of Article 370 that the State of Jammu and Kashmir has her own constitution, which may be in true perspective of federalism, while the rest of the States of the Indian Union are governed under Indian Constitution, has this sort of tendency not been a cause of jealous attitude of other States against the Centre and the State of Jammu and Kashmir?; does the plea by some constitutional experts or *Pandits* or political elites that Article 370 is entrenched and does not erode the avowed constitutional mandate, a mere myth? Besides, there is a public opinion generated in the country that the retention of Article 370 in the Constitution permeates a tendency of disintegration, disunity inasmuch as affecting the very fabric of the basic structure of the Constitution of India. Since the State has her own constitution, the provisions of the Indian Constitution having been extended to the State by Constitutional Orders, 42nd amendment to the Constitution of India introduced Article 51A prescribing Fundamental Duties to be observed by the Indians to strengthen the very fabric of the constitutional promise of trinity, viz., fraternity, unity and integrity, has not so far been extended to the State of Jammu and Kashmir, thus developing a right feeling that this sort of escapism alone is responsible for accelerating the tendency of secessionism. Isn't it? The Governor of the State of Jammu and Kashmir enjoys certain special powers like the non-reservation of a Bill for the consideration of the President of India and eventually

stepping in his shoes to act in the matters of veto power to give assent to a Bill, while the Governors of the rest of the States of the Indian Union have no such powers and thus limited powers, and as such giving rise to a jealous feeling outside the States. Under the Indian Constitution all the Indians including the State of Jammu and Kashmir shall have only one citizenship, however, under the Jammu and Kashmir constitution there is a provision for giving certain privileges to the State Subjects which non-State Subjects cannot enjoy, and thus giving rise to a contentious feeling that there is a dual citizenship with regard to the State of Jammu and Kashmir. There seems to be certain procedural ambiguities concerning the amendment or repeal or abrogation of Article 370, and as such a question: Should the Parliament of India assume the status of Constituent Assembly in the absence of Jammu and Kashmir Constituent Assembly for the State of Jammu and Kashmir for the purposes of amendment or repeal or abrogation of Article 370 under the process of amendability enjoined in Article 368 of the Constitution of India? It is a mandatory requirement that any provision of the Constitution of India can be amended or repealed or abrogated by the Parliament alone, while its Article 370 can be amended on the recommendation of State Constituent Assembly, does it not amount to abdication or effacing of Parliament of its domain; does it not violate the basic tenet that essential features of the legislature cannot be delegated or abdicated; does this type of arrangement not disturb the constituent power of the Parliament and the basic structure of the Constitution?

These are some of the problematic constitutional issues in the arena of on-going debate on Article 370; there may be a many more issues which suffer from the vice of artificiality. These issues, indeed, call for an in-depth examination for having unshakeable insights in true perspectives. However, these legal issues revolving around the constitutional aspects of Article 370, unequivocally, tell that its deletion or retention should no longer be the domain of any political gimmick or political ideology, but the political elites must now take a realistic or pragmatic or functional, and not escapist, vision of the whole gamut of the problem.

Such a perception alone would yield a plausible solution to this knotty problem.

The first issue is more historical as well as political. Nevertheless, the misconceptions of the past teach to move in the right perspective in the present thus avoiding a tortuous path for the future. This issue takes us back to the developments preceding the accession of Jammu and Kashmir with the Union of India, 26-27 October, 1947; the accession and the succeeding developments; the proposed Article 306-A (now Article 370) in the Constituent Assembly of India ; the culmination of the Constitution of Jammu and Kashmir; the Delhi Agreement, 1952; the Constitutional orders of 1954, 1962 and 1986; the 1974 Accord; the impact of Shimla Agreement on the preceding UN Resolutions of 1948-1949; the other questions mostly concerning the constitutional imbroglios.

2

Genesis of the Problem

The history preceding the accession of Jammu and Kashmir with the Union of India is interesting as well as intriguing. A succinct scanning of the historical facts would be essential to understanding the imbroglio in its right perspective. Historically viewed, before the accession of the State of Jammu and Kashmir with the Union of India under the Indian Independence Act, 1947 (Section 7) [the Indian federation in cohesion was originally conceived in Government of India Act, 1935], as one of its composite units, it was an Indian State ruled by a hereditary Maharaja inasmuch as the other Indian States were under the suzerainty of respective Maharajas or princes. The State of Jammu and Kashmir was the creation of the treaty of Amritsar of 16 March, 1846 through which Kashmir was annexed with Jammu and thus conferring on the ruler of Jammu Maharaja Gulab Singh the sovereignty of Kashmir also, and thus the State of Jammu and Kashmir came into

being.¹ It may, however, not be out of context to mention here that from ancient times, the hill and plain people of Jammu have constituted an independent State with a distinct cultural heritage — which has not been conquered by the people of the north as well as the south. On the other hand, at many times they have dominated the kingdoms of their geographical neighbours including Punjab, Kashmir, Ladakh and Gilgit. However, the integration between Kashmir and Jammu was merely political, and was mainly motivated by the British Indian Government's desire as well as design to create a buffer between the expanding Russian and Chinese empires and their Indian dominion.² As a result of the imperialist conspiracies thus started the sordid history of the problem of Jammu and Kashmir. The roots as well as routes of the problem lie deep in the history. And, past has to be probed thus not leaving the problem as unfathomable but understandable in the present scenario. This historical probe dates back to what is known as pre-British India and British India. The historical revelations may intimately provide a convenient clue to the meddling of the problem in the hands of those principal actors whose mishandling alone could be responsible and contributory to the sordid intrigue as well as treachery.

Kashmir originally of Hindus had experienced the Buddhists, and the Muslim influences. The ancient history of Kashmir though may not be clear but the historical accounts given by Kalhana in his *Rajatarangini*, which is considered to be the first historian,³ dates its history from the sage Kashyap. Since the historical materials relating to the Hindu period in Kashmir are unconnected, Kalhana's book is considered to be an authoritative book by the historians because it alone fills up the void or vacuum in the paucity of historical literature.⁴ The successive historians took up where Kalhana had left and completed the unconnected history of Kashmir up to the conquest of the Kashmir valley by the Moghul ruler Akbar in 1586.⁵

Kashmir was the part of the empire of a Hindu King Ashoka in the 3rd BC.⁶ It is believed that it was King Ashoka who introduced Buddhism into the State of Jammu and

Kashmir.⁷ After the commencement of the Christian era, the Valley of Kashmir was invaded by Tartas.⁸ In the 6th century AD came the Huns.⁹ The Chinese traveller and writer Hieun Tsang happened to visit the Valley of Kashmir in 629-631 AD.¹⁰ Lalitaditya is the most famous later Hindu rulers.¹¹

The Muslims entered into India in force in 712 AD under Muhammad Ibu Kasim.¹² In the early eleventh century Mahmud of Ghazni swooped down upon Punjab and in the course of time the Punjab became a Muslim dominated area, although the Hindus including Sikhs of the Province constituted very powerful minority group.¹³ Mahmud of Ghazni endeavoured to invade the Valley of Kashmir but failed.¹⁴ However, the dynastic revolutions followed and with the propagation of Islam the Valley of Kashmir passed into the hands of the Muslim rulers in 1339, but effective Islamisation of Kashmir was effectuated during the reign of Shikandar in 1389-1413 who had persecuted Hindus and was known as *Butshikan* (Iconoclast).¹⁵ As Islamic influence penetrated deeply in other parts of the country either because of the element of immigrants — Arab, Turk, Pathan, Afghan and Persian, or, the factor of intermarriages, i.e., the early Muslim rulers and army commanders married the Hindus and as a result a mixed community grew up from which were drawn, probably, the leaders of the Muslim movement in the twentieth century, or, the most important factor of conversion (forceful or voluntary), similarly it penetrated deeply into the Valley of Kashmir.¹⁶ So, in the main, the Muslims of India including Kashmir are of Indian origin.¹⁷ However, Sultan Zain-ul-Abidin (1420-1470) was considered to be the most notable Muslim ruler who had been described most generous as well as brave, and earned the goodwill of Hindus.¹⁸ Jehangir and Shah Jehan were very fond of Kashmir, using it as a retreat from the hot summer of the northern plains.¹⁹

In 1750 a new twist seemed to have taken place in the history of the Valley when Ahmed Shah Abdali invaded and occupied Kashmir, and this way Afghan rule came to be in the wake which was most harsh.²⁰ The harsh Afghan rule continued and brought some untold stories to surface

inasmuch as that in 1819 some of its persecuted people called upon Maharaja Ranjit Singh of Punjab; unfolded their miseries, sufferings and haplessness; and, approached him to rescue them.²¹ The Maharaja sent Raja Gulab Singh, a Dogra Rajput ruler of Jammu and the founder of the ruling dynasty of Jammu and Kashmir, to the Valley at the head of the army.²² The Afghan Governor was defeated, and from 1819 to 1846 Kashmir was under the sovereignty of Sikhs.²³

As already observed, Maharaja Gulab Singh assumed the sovereignty of Jammu and Kashmir with the final collapse of the Sikh power in 1846 which was on account of the vacuum caused due to the demise of Maharaja Ranjit Singh on 27 June, 1839 and Britishers taking over the power.²⁴ When Sikh Durbar was unable to pay an indemnity of £ 150,000, Gulab Singh expressed his willingness to foot the bill provided he got the sovereignty over Kashmir.²⁵ Thus the culmination of Amritsar Treaty of 16 March, 1846 and acceding of the Valley of Kashmir with Jammu thus emerging the State of Jammu and Kashmir with the sovereignty of Maharaja Gulab Singh (1846-1857).²⁶ Maharaja Gulab Singh was a strong ruler. Most of his time as well as energies were spent in consolidating his State by bringing the territories of the State under his direct rule.²⁷ He introduced many more reforms in agricultural land; he lessened the burden on the peasantry of begar, a system of free labour which existed from ancient times; he also introduced reforms in education system in the State to its modernity, because he was visionary of farsightedness so far so much the education could alone advance the State to the path of progressiveness;²⁸ he also introduced rice rationing in the Valley.²⁹ Thus his eleven years of rule witnessed gradual establishment of order in the State which has been *a fortiorari* explained by a great historian K.M. Panikar : "In a century barren of historical achievement in India, Gulab Singh stands out a solitary figure of political eminence. He is the only ruler in India's long history who could be said to have extended the geographical boundaries of India. No previous India ruler, not even Samudra Gupta or Akbar has ever dreamt of invading Tibet and although Zorawar, who

ventured too far, paid a penalty for his adventure, the Maharaja's forces routed the Tibetan army and extended the border of India to the other side of Himalayas".³⁰

It may discern that Gulab Singh's actions and deeds were directed to improve the lot of his people. However, the Britishers realised their folly of the Amritsar Treaty of non-interference in the affairs of the State, and obviously they spread the misgivings that there was misrule in the State and the people ... particularly the Muslim population of the state ... was distressed as well as dissatisfied and unhappy with the ruler. The Britishers conveyed to the ruler that the lot of the people could only be improved through the appointment of a Resident Officer. This was resisted. However, in 1852 an officer on special duty was appointed in Gulab Singh's Durbar which system continued till 1885.³¹ It is an irony of the fate to note that the Britishers in India were nurturing the separatist feelings amidst Muslims by pursuing the policy of divide and rule. Similarly, in the Valley they succeeded to instigate the Muslims to express their concern against the reformative policies of Gulab Singh particularly in the arena of education on the proxy plea that that would amount to going against their religion and classical way of learning Arabic, Persian. Thus, the Muslims joined the band-bag of Britishers prey, and desired to continue to be in egg-shell of their conservatism, i.e., a movement for a return to the primitive days, a sort of attempted purification of Islam from the contamination of Hindu (ruler).³² Thus, it discerns, the Britishers succeeded in creating a cleavage between Hindus and Muslims on the one hand, and the ruler and the Muslims on the other hand. Muslims voiced against the ruler in 1847, and the high-handedness of things is expressingly evident from the records of Col. Lawrence and George Taylor who wrote a letter to Gulab Singh pleading the causes of the Muslims.³³ It may not be futile to discern that the seeds of alienation had been sown in 1847 which continued successively successfully and would get a mention subsequently.

Gulab Singh died in 1857 and Maharaja Ranbir Singh succeeded, and his reign continued upto 1885. The period

of his reign was full of turbulence. Be that as it may, Ranbir Singh introduced many reforms in legal side as well as social improvements irrespective of Britishers interferences now and then and continuance of Muslim fanaticism.

Ranbir Singh was succeeded in 1885 by his eldest son Maharaja Pratap Singh who continued till 1925. It is intriguing to note that during Pratap Singh's reign a British resident was appointed in place of an officer on special duty.³⁴ The Resident and his assistants were empowered to try civil suits. A council was constituted for the administration of the State with Raja Amar Singh, the younger brother of Pratap Singh,³⁵ and two officers of the Government of India as members. Amar Singh played a major part in the administration till his death in 1907.³⁶ Besides, the Muslim excitement reached to a point when someone in that vein raised a voice which tells nothing but the feelings and perceptions of short-sightedness as well as separatist tendencies. This was due to the unstinted support of the Resident which was nothing but disturbing the communal harmony. It may not be specious to say that the battle lines of separatist trends were drawn, and the penetration of which could be witnessed during 1925-1947 and thereafter the accession, and even till day. It is evident from a poem written in Urdu and published in a Kashmiri magazine on 27 February, 1920 and the English version of it reads as follows :

*The Maharaja of Hindu religion is the ruler of our country,
Our affairs are in the hands of aliens,
For this reason our life and death is in the grip of
their hands,
Funds for schools and madrasas are being raised
from us,
But other nationalities benefit by them,
A Brahmin wins Maharaja's favours because he is of
the same faith,
For this reason we receive no honour in the court of
Maharaja,*

*To be sure the majority of state subjects are
Mohammadans,
But this numerical superiority did not raise our fortune
in balance.³⁷*

It may be befitting to recall that the above-mentioned poetic feeling was germinating amongst the majority population of the State and that was, perhaps, because of the Islamic feelings being spread for a separatist gain on the national scene. For example, Sir Sayed Ahmad Khan (1817-1898), the founder of the Anglo-Oriental College at Aligarh in 1875, which became the Aligarh Muslim University in 1920, on the one hand strongly urged his co-religionists to take up western education, and, on the other hand, his thought was inspired by a belief that the Muslims of India were separate people who should not be submerged in the pool of Hindu tradition, but should stand apart, and as such his ideas exerted a considerable influence on the Muslims of the period.³⁸ He had even asked his brethren to co-operate With the British rulers, because foreign rulers were neutral towards religious beliefs of the Indians, but what would happen to Islam if India ever passed into the hands of Hindus.³⁹ The principal reason for this was nothing but morbid fear of Hindu domination,⁴⁰ and that, probably, continues to be till day thus leading a feeling of separatist in the Valley particularly. Mohamad Iqbal (1876-1938) asserted that Islam was not only a spiritual creed but also a social order.^{40a} He believed that a distinction between things temporal and things spiritual was meaningless so far as Islam was concerned, and as such he *a fortiori* exerted for the retention of a separate electorate for the Muslims in any scheme of representative government, because the Muslims were not mere minorities but "the only Indian people who can fitly be described as a nation in the modern sense of the word".⁴¹ What a paradox !

In 1924 a deputation of Muslims of the Valley presented a memorial to the Viceroy Lord Reading on his visit to Srinagar. The memorial demanded that land ownership rights be given to peasants, that more Muslims

be employed in the State service, that they be given better facilities for education, that be abolished, and that all mosques in the possession of the government be handed over to the Muslims. Thus the story of Kashmir's struggle ... better to designate it confrontationist attitude, i.e., Kashmiri Muslims' struggle ... for freedom from the Hindu ruler began to unfold itself.

Meanwhile, a new era or saga in the history of the State of Jammu and Kashmir began with the accession of Maharaja Hari Singh (son of Raja Amar Singh) in September 1925 after his uncle's (Pratap Singh) death. Hari Singh had a bright start himself responding to the challenges of the day by introducing a series of reforms through the instrumentalities of modern laws, in the sphere of education, economic and social reforms, etc.⁴² The people of the State had started looking forward. But the times were changing. Kashmiri Pandits stole a march over the Kashmiri Muslims, observes Premnath Bazaz,⁴³ by launching a movement, under the leadership of Shankarlal Koul, known as Kashmir for Kashmiris, i.e., recruitment of educated sons of the soil in government services, ban on the sale of land to outsiders, freedom of the press, freedom of association and assembly, and creation of an elected legislature to voice the views of the people on all affairs of the State.⁴⁴ It was a result of this movement that Maharaja Hari Singh had passed a law on 31 January, 1927 (which is now a part of Jammu and Kashmir Constitution: Sections 6-9) known as State Subjects Law imposing restrictions on the entry of non-Kashmiris in government services and on the sale of agricultural land to them.⁴⁵ This measure did not bring contentment to the Kashmiri Muslims, because their demand for the reservation of jobs for Muslims was not conceded; the Muslims were to succeed in open competition with other communities.⁴⁶ It may be worth recalling that the Kashmiri Muslims were themselves responsible to their despair and disappointment at the initial stages owing to their lack of interest of progress in the field of education introduced by Gulab Singh. The history affords testimony that the Kashmiri Muslims, on the contrary, carried on a relentless propaganda against the

then State government for her inability to provide educational facilities to the Muslims.⁴⁷ Kashmiri Muslims organised themselves into a group calling it the All India Kashmir Muslim Conference, and functioning from Lahore, the capital of Punjab, offered scholarships to poor Muslim students from Kashmir desirous of having higher education in India.⁴⁸ Muslims of Kashmir were assisted by Punjabi Muslims, who had already started evincing keen interest in the fate of their Kashmiri brethren.⁴⁹ Some Kashmiri Muslims availed of this facility and, after receiving education in Aligarh and other places in India, returned to Kashmir to inflate the discontented elements.⁵⁰ One such person was Sheikh Mohammad Abdullah; he was born in 1905 of a poor family engaged in the shawl trade; he took his M.Sc. from the Aligarh Muslim University in 1930; and, he returned home.⁵¹ It discerns that the separatist as well as secessionist attitude and seeking assistance from across the border is not a new thing but having its roots in this tendency, i.e., seeking to solicit the goodwill of others for self-baneful attitude, or, to press one's suit with beguile.

Things were also moving fast in India. The Indian National Congress at its Lahore session held on the banks of Ravi in December, 1929 adopted a resolution setting complete independence — *Purna Swarajaya* — as its goal. A mass civil disobedience movement was launched. Jammu and Kashmir, too, felt its impact, and the people were deeply excited as well as interested with what was happening to the national freedom movement in the country. On the contrary, the constitutional deliberations that began in 1927 with the appointment of Simon Commission led to a rapid or fast reorganisation of the Muslims under a reformed Muslim League with Jinnah as the leader demanding separate electorates for Muslims, principle of communal selection for the services, more autonomy for the Muslim-majority provinces.⁵² In 1930, Muhammad Iqbal, himself a Kashmiri Muslim, had suggested a thesis of pan-Islam, that is a union of the Frontier Provinces, Baluchistan, Sindh, and Kashmir as Muslim States within a federation.⁵³ It is a rhetoric that "this proved to be creative idea which

germinated during the early thirties to burst into vigorous life with the advent of the new reforms".⁵⁴ In 1933, Choudhari Rahmat Ali developed this idea of Iqbal at Cambridge by advocating a separate homeland for the Muslims of north-west comprising Punjab, the Frontier Provinces, Kashmir and Sindh and named it Pakistan — the land of the Pure (P=Punjab, A=Afghan, K=Kashmir, S=Sindh, and Tan=Baluchistan) as others are impure.⁵⁵ That is why Pakistan craves for inclusion of Kashmir in her fold, and so also Kashmiri Muslims. This obviously calls for the re-examination and assessment of the attitude of separatists, secessionists and wagers of war against the Government of India in Independent India by revisiting them.

What has happened in India had its influence on the Kashmiri Muslim movement in the State. The young Kashmiri Muslims who were studying in various Indian Universities in the thirties were in thick of the Muslim movement (outlined above), and when they returned to their homeland, were already imbued with revolutionary ideas.⁵⁶ In 1930, Sheikh Abdullah, in league with a few graduate compatriots, founded a new reading room organisation in Srinagar to discuss the problems of the Muslim community.⁵⁷ The activities of this organisation subtly penetrated the minds of the Muslims of Kashmir, and that eventually culminated into the formation of Muslim Conference of which Sheikh Abdullah himself became president.⁵⁸ Muslim Conference wanted to have a say in the political affairs of the State from outside.⁵⁹ Thus, Sheikh Abdullah's fight against autocracy for the democratic rights for the Muslims of Kashmir made him popular figure amongst his brethren community. It is an irony of fate to call Sheikh Abdullah as a secular national leader when his activities were restricted to his community and to one section of the population of the State. It is a paradox that why he did not raise his voice for other communities who too were the equal components of the population. He devised his activities to inviting others to join his fold as well as hold in order to establish his superiority and leadership. Therefore, fight against own autocrat cannot be designated as a freedom

movement in Kashmir in its right perspective. For him, what suited him was national and what did not suit him was anti-national. Intriguingly, with the accelerating activities of Muslim Conference, the tension between Hindus and Muslims grew that led to communal riots in Srinagar in June, 1931.⁶⁰ It is said that an outsider Muslim Abdul Qadir, a butler of a European, delivered a fiery speech inviting Muslims to massacre the Hindus.⁶¹ Hindus suffered heavily.⁶² 300 people including Sheikh Abdullah were arrested. In July, 1931, Muslim Conference launched a massive demonstration against the government and the Maharaja, and gathered outside a jail to have its forceful entry into the jail where an outsider Muslim, Abdul Qadir, was on trial thus causing the police to open fire. As a result, 21 people were killed, and the modern Kashmir's freedom movement was born on 13 July, 1931.⁶³ The movement was undoubtedly communal. On 14 August, 1931, the All-India Kashmir Muslim Conference of Lahore observed a Kashmir day throughout India, including Kashmir.⁶⁴ It seems that the modern activities of Pakistan has had its route herein. It is intriguing that no Kashmir day was observed when heavy casualties of Hindus took place in the communal riots.

Communal strife caused Hari Singh to appoint a Commission with B.J. Glancy (of the Political Department of Government of India) as Chairman with four non-official members of the State to inquire into the religious and secular grievances of the people.⁶⁵ The result was that the recommendations of the Glancy Commission were accepted by Hari Singh, and consequently, the Jammu-Kashmir Praja Sabha was established in 1936.⁶⁶ The right to vote was given to about 6 percent of the population including women.⁶⁷

Sheikh Abdullah wanted to give a non-communal colour to his Muslim Conference, and as such he got changed the organisation's name to National Conference in June 1938.⁶⁸ In 1940, Pandit Jawaharlal Nehru accompanied by Khan Abdul Ghaffar Khan visited Kashmir at the invitation of Sheikh Abdullah, and the visit proved a turning point in the political career of Sheikh Abdullah.⁶⁹ In between, the Jammu and Kashmir Constitution was formulated in

1939 by Hari Singh thus paving a way for more democratisation.⁷⁰ Surprisingly, it is worth mentioning that Hari Singh's relation with British Government had already been strained; the British pressure for the reorientation of the government continued unabated; Hari Singh appointed Lt. Col. E.J.D. Colvin of the Foreign and Political Department of the British Indian Government as the Prime Minister in March, 1933; Colvin relinquished the post in the beginning of 1936; N. Gopalaswami Ayyangar succeeded Colvin and that closed the British chapter for the time being.⁷¹ In 1943, Ayyangar relinquished and was succeeded by Maharaja Singh, whose short-term terminated with the assumption of premiership by Sir B.N. Rau, a great jurist, in January 1944. Ram Chand Kak took premiership from Sir B.N. Rau, and Justice Mehar Chand Mahajan took over as Prime Minister of Hari Singh on 15 October, 1947.

In July, 1943, Hari Singh appointed a Commission under the Chairmanship of Rai Bahadur Ganga Nath, Chief Justice and President of the Praja Sabha, to ascertain whether the Constitution of the State (of 1939) was working well and to formulate a policy for future constitutional change and administrative reforms.⁷²

Mohammad Ali Jinnah visited Kashmir Valley in June 1944 under the pretext of health reason, but in fact he wanted to wean the National Conference leadership from the Indian National Congress, but he failed to woo the National Conference leadership to his side.⁷³

In August, 1945, Pandit Nehru, Khan Abdul Ghaffar Khan and Maulana Abul Kalam Azad visited Sopore (Kashmir) and attended the session of the National Conference on the invitation of Sheikh Abdullah when Sheikh Abdullah declared his programme of New Kashmir that "the future and independence of Jammu and Kashmir State is inextricably linked with the future and independence of India".⁷⁴

Sheikh's last phase of opposition to Hari Singh was his National Conference's agitation in May 1946 put forth in the slogan of "Quit Kashmir".⁷⁵ Sheikh Abdullah tried to justify and equate Quit Kashmir with that of "Quit India", a

movement launched by Indian National Freedom Movement under the leadership of Mahatma Mohandas Karamchand Gandhi against the foreign British rulers in 1942 to quit from the Indian soil. Quit Kashmir and Quit India seemed to be unrealistically equated and exploited. Quit Kashmir was against Hari Singh — a patriot par excellence — asking him to quit from his own soil whom he represented as a sovereign and an independent; who never went against his subjects and their welfare; who never was anti-India. This is for the historians to judge his deeds and actions and any misgivings, but my reading of the literature tells that Hari Singh was never anti-Indian, but was against foreign British rule.⁷⁶ Hari Singh's announcement of 15 July, 1946 unequivocally tells his mind deeply involved in the State and India's future relationship as well as constitutional wedlock :

...Naturally we are interested in the progress of India as a whole. My views on the subject are well known and on more than one occasion I have given expression to them. They are briefly that *we look forward to taking our due place in the new constitutional structure of India*, whereby we hope that India will be able to take its proper place as a great nation, one of the brotherhood of nations, and to wield great influence in the affairs of the world, thus adding to human civilisation those aspects of our great culture which will help to solve the problems of mankind.⁷⁷

Sheikh Abdullah, the leader of this movement, and his other associates were arrested and the agitation was quelled. Pandit Nehru was eager to visit Kashmir to see that Sheikh was released, but he was disallowed to visit the Valley and his entry was banned. Nehru tried to enter the State, and as such arrested at Kachala Bridge.⁷⁸ Nehru was got released and he returned from Kohala, but this episode opened another Chapter in the sordid events of Kashmir.

It may not be desirable to go in more details of history. Suffice it to mention that Sheikh Abdullah expressed his

loyalty to the Maharaja, but he always nourished the design to snatch the powers from Hari Singh and to throw Hari Singh out of his own State with bag and baggage, and that was Sheikh's New Kashmir dream coupled with Quit Kashmir movement. However, it would be desirable to know the constitutional position of Maharaja Hari Singh on 15 August, 1947, for that had to determine the nature of accession of Jammu and Kashmir with Indian federal polity.⁷⁹ On June 17, 1947 the Indian Independence Act was passed by the British Parliament providing for transfer of power to two newly created Dominions, *viz.*, India and Pakistan; Section 7 of the said Act provided that the Indian Princely State could choose to have had accession with either of the Dominions. In between, a reference may be made to the Government of India Act, 1935 which conceived and contemplated a federal structure, i.e., it was left to the Princely Rulers of Indian States to determine the question about accession of their respective states to the Indian Federation; the State subjects did not come into picture at all. This type of Indian federation never came into being. However, a mention of the truth facts be stated to override the truth of lies that the just above mentioned laws of 1935 and 1947 are no more on the statutory books of India as they stand deleted and, hence, any argument under the proxy of them is illegality.

The future of the Indian Princely States in Independent India was contemplated in the Memorandum on States Treaties and Paramountcy presented by the Cabinet Mission to His Highness the Chancellor of the Chamber of Princes on 12 May, 1946. The Paramountcy was to lapse on the attainment of Indian Independence on 15 August, 1947, the Princes were free to accede to either dominion or become Independent. Section 7(2)(b) of the Indian Independence Act, 1947 made this position clear, and there is nothing in this Act enjoining for conditional accession, accession had to be voluntary and not under duress. All (roughly about 562) Indian States but three States (Junagad, Hyderabad and Kashmir) acceded to either dominion by that date. The fateful story of Junagad and Hyderabad is well known and needs no mention. Thus, the true constitutional position of

Maharaja Hari Singh was that it was his sole privilege and prerogative to decide the future relationship of his State with the two dominions because "...Maharaja Hari Singh continued to be an absolute monarch of the State, and in the eyes of International law, he might conceivably have claimed the status of a sovereign and independent State."⁸⁰

Hari Singh is sometimes blamed that had he decided the issue of accession in time the consequence of incalculable character could have been averted. But the blame is baseless, because one must judge with utmost fairness the causes of his indecisiveness. As an absolute monarch he could have acceded to Pakistan, but it is conceivable that his inclination was to align with India.⁸¹ But the idea of acceding to India immediately opened the prospect of putting Sheikh Abdullah in power for which Sheikh was ambitious.⁸² Besides, it is worthwhile to recall the various pulls and pressures brought on Hari Singh in the month of August, 1947 concerning accession, *viz.*, first, in point of time were the various visits of Mountbatten, Jinna's emissaries, Mahatma Gandhi, the Congress President, and the rulers of States to apprise Hari Singh of the risk of his indecisiveness ; second, the trouble of Poonch and Jammu; third, the deteriorating communal situation in Punjab with the repercussions on Jammu; fourth, the political vacuum in the State with all the principal leaders in jail; and, finally, the pulls and pressures of the home front—with Ram Chandra Kak and the family priest—to remain independent.⁸³ Under these circumstances, Hari Singh could not make up his vacillating mind. This was the time when Hari Singh got rid of his Prime Minister, Ram Chandra Kak.

Working under these circumstances, Hari Singh sought from both the dominions a Standstill Agreement to come into force on 15 August, 1947. Pakistan immediately accepted the Standstill Agreement with regard to the State's Communications, Supplies, and Post Office and Telegraphic arrangements. But, Government of India, however, asked the Maharaja to come to Delhi personally or send his Prime Minister or send his Minister duly authorised to negotiate a

Standstill Agreement. It may, however, be made clear that the Standstill Agreement was purely provisional without any built-in obligation with regard to accession.

In the meanwhile some ominous signs were visible, *viz.*, Pakistani infiltrators started raids into Jammu and Poonch. The situation was becoming alarming and was going from bad to worse. Meanwhile, Sheikh Abdullah and most of his colleagues were released from jail on 29 September, 1947.

Before the Prime Minister could visit Delhi to discuss the Standstill Agreement, Kashmir was invaded on 22 October, 1947 by tribesmen with the connivance and active support of Pakistan's rulers. Besides, Pakistan in violation of the Standstill Agreement had stopped supplies of petrol, oil, food, salt, sugar, cloth; the working of the postal system had been detrimental to the interests of Kashmir, savings bank accounts were refused and postal certificates not cashed; as the Labour Currency Office was not sending remittances, Imperial Bank branches in Kashmir were hard put to meet obligations; motor vehicles registered in the State had been held at Rawalpindi and railway traffic from Sialkot to Jammu had been discontinued.⁸⁴ It seemed that the Pakistan Government was "attempting to force the Maharaja's hand by (effective) economic pressure (blockade) on the State".⁸⁵ Thus duressing or coercing Maharaja to have had accession to Pakistan. And, naturally, Maharaja Hari Singh could look for friendly assistance from one direction only, i.e., India, thus ending the uncertain and dangerously unstable position in the State.

Besides economic blockade, Pakistan had also showed her hands by pressurising Maharaja Hari Singh not to accede to India by sending her emissary Major Shah to Kashmir with a whip in one hand and letter of accession in the other. Jinnah was also dreaming to have Kashmir with Pakistan just like the Mughal Emperors having used Kashmir as a *affaire de coeur*. Pakistan's aggression on Kashmir in the garb of infiltrators on 22 October, 1947 was an ulterior design to capture Kashmir by force. Hari Singh decided that the raiders should be given a receding battle. It was in such a situation that Hari Singh decided to have a free and

voluntary accession to India, because personally he was very much averse to acceding to Pakistan after August, 1947. Hari Singh's love for India alone is milestone in making accession to India unconditionally. Hari Singh also could not close his eyes to what had happened in Pakistan to Hindu population nor forget how the property of every Hindu had been looted and almost the entire Hindu population massacred. He naturally did not want such scene to be enacted in his State where Hindus and Muslims were at that time living like brethren even when massacres were going on in Pakistan. Accession to Pakistan, in Hari Singh's view, would have involved the complete destruction of the Hindu population of the State and seizure of all that they had, including the education of women.⁸⁶ It may be a question that why did Hari Singh dreamt about the idea of an independent State? This could be answered that was sheer sentimentalism based on the ill-advice given to him by his earlier Prime Minister Ram Chandra Kak and his family priest, but however, it was not a practical politics because their was a wholly unrealistic approach to the problem. There is a mention in the records that Lord Mountbatten had been advising Hari Singh not to accede to any one of the two dominions without ascertaining the issue of his subjects by referendum, plebiscite, election or by representative public meeting. This was a curious contrast with the advice which Mountbatten was giving to the Nizam of Hyderabad. Obviously, Hari Singh could not make up his mind but waited and watched with interest developments in Hyderabad. This naturally made Hari Singh to delay matters concerning accession. It may be worth to discern the British way of politics in India.⁸⁷ The Muslim Conference party had no policy because it consisted of only fanatics who had not the interest of the people but of their own or at the best of their religion, and as such the communal party egged on by Pakistan propaganda was demanding accession of the State to Pakistan.⁸⁸ National Conference leaders were vacillating with the idea of accession because some wanted State's accession to India, and some wanted to keep the State independent of both the dominions; the rulers of Chitral Hunza and other feudatory dependencies were

sending frantic messages to Hari Singh swearing loyalty to him but pressing him to accede to Pakistan.⁸⁹ In an interview Mahatma Gandhi, on record, happened to say that there was no hurry to persuade Hari Singh to accede to India, better to study the situation.⁹⁰ Sardar Vallabh Bhai Patel liked Kashmir accession to India if it came voluntary from Maharaja Hari Singh with the assent of the political conscious groups in the State.⁹¹ Pandit Jawaharlal Nehru was more keen on the Maharaja's handing over the power to Sheikh Abdullah than about accession.⁹² Alongside, Kashmir blockade and all out efforts were laid by Pakistani agents to create communal trouble inside the State just as it had created in India before and after partition.⁹³ There was a design to kidnap and abduct Maharaja Hari Singh and his Prime Minister, M.C. Mahajan, with a plan to take forcible accession at the point of the bayonet.⁹⁴ The Superintendent of Police of Jammu had become a Pakistani agent and so was the Muslim Chief of Staff.⁹⁵ Is it not an irony of fate that those aggressive powers who design such attacks on the people of Kashmir to procure accession by duress are now arguing the world over claiming to be Kashmir's and Kashmiris guardian? It is the fortunate state of the affairs that Maharaja Hari Singh had got information about Pakistan's intrigue and contemplated attack on the State a month before it actually came; the information came to him through a loyal friend.⁹⁶ It must not be forgotten that all the tribesmen were subjects of Pakistan who made an unprovoked acts of aggression because Maharaja Hari Singh had done nothing to invite. It appears that the sole objective was to take possession of the State by force.⁹⁷

The Indian Independence Act, 1947 did not contain any provision for conditional accession; it could not envisage such a situation as it would be outside Parliament also. The Act did not keep any Indian State in a state of surprise and deception. It conferred on the rulers of Indian States absolute power in their discretion to accede to either of the two dominions. The Governor-General of the two dominions had power to accept the accession or reject the offer of accession, but he had no power to keep the question open

or attach conditions to it. Under these circumstances, Maharaja Hari Singh asked his Prime Minister M.C. Mahajan to fly to Delhi with an Instrument of Accession of the State to India with personal letters to Prime Minister Pandit Jawaharlal Nehru and Home Minister Sardar Vallabh Bhai Patel, asking for military help in men, arms and ammunition to save the State from Pakistan's unprovoked aggression, giving a befitting receding battle to the infiltrators and crushing all the ulterior intrigues of Pakistan. Meanwhile, Sheikh Abdullah also flew to Delhi to meet Pandit Nehru. As Hari Singh, M.C. Mahajan and others were groping for a way out, V.P. Menon, Secretary of the Ministry of State, arrived in Srinagar by plane. Hari Singh was persuaded to leave Srinagar on the 26 October morning, and V.P. Menon and M.C. Mahajan flew to Delhi with an Instrument of Accession along with a letter. One may note, the stirring moments transpired in a meeting between the Prime Minister of India and M.C. Mahajan, the Prime Minister of Maharaja Hari Singh. "The Prime Minister Pandit Nehru was sticking to his own view of not moving the army to Srinagar immediately rather he has reportedly to have said that even if Kashmir was taken by the tribesmen India was strong enough to retake it. M.C. Mahajan at last forcefully said to give the military force the Maharaja needed to give a befitting receding battle to the aggressors, and as such offered the accession of the State to India. Mahajan reportedly had gone to the extent of telling Pandit Nehru to give power to the popular ruling party he desired, but the army must fly to save the Kashmir or else he would go to Lahore and negotiate terms with Mr. Jinnah".⁹⁸ Pandit Nehru naturally in an angry reciprocation told "Mahajan go away". As Mahajan was about to leave the room, Sardar Patel detained him by saying that Mahajan, of course, you were not going to Pakistan. Then a piece of paper was passed over to Pandit Nehru; Pandit Nehru read it and said in a loud voice: "Sheikh Sahib also says the same thing". Sheikh Abdullah happened to listening all the talks while sitting in one of the adjoining bed rooms. Pandit Nehru's attitude changed on reading Abdullah's slip and after a few minutes' talk he told Mahajan that a decision would be communicated after Cabinet meeting. The Cabinet

meeting approved the decision of the Defence Council to give military aid to Maharaja Hari Singh to drive out the tribesmen from the Valley. Next morning, i.e., 27 October, 1947, Mahajan and V.P. Menon flew back to Jammu to apprise Maharaja Hari Singh of the military help. While leaving for Jammu M.C. Mahajan reportedly had asked Prime Minister Pandit Nehru to give him in his own hand writing the conditions on which Maharaja Hari Singh had been given military help at such a critical juncture. Pandit Nehru wrote those terms and conditions which are briefly as under:

First, that Maharaja Hari Singh should accede to India with regard to three Subjects, namely, defence, external affairs and communication, this he had already done; Secondly, the internal administration of the State should be democratised and new constitution be framed on the lines of the model already set out for the State of Mysore; thirdly, that Sheikh Abdullah should be taken into the administration and made responsible for it along with the Prime Minister.

Pandit Nehru reportedly had confirmed these terms in a typed letter the next day. It undoubtedly discerns that these conditions were imposed by Pandit Nehru and Hari Singh did not appear to have made any condition thus making the accession as conditional, rather Hari Singh's accession was voluntary, free and frank, whereas Pandit Nehru's conditions made the voluntary accession as conditional accession which seemed to be against the letter and spirit of Independence Act, constitutionalism.

Thus came the accession of the State of Jammu and Kashmir with India by signing an Instrument of Accession on 26 October, 1947, which was approved by Lord Mountbatten, the then Governor General, on 27 October, 1947 again with an accompanying letter to the Instrument of Accession which *inter alia* read as "...(M)y Government have decided to accept the accession of Kashmir State to the Dominion of India. In consistence with their policy that in the case of any State where the issue of accession has been the subject of dispute, the question of accession should

be decided in accordance with the wishes of the people of the State, it is my Government's wish that, as soon as law and order have been restored in Kashmir and its soil cleared of the invaders, the question of the State's accession should be settled by a reference to the people."⁹⁹

Both these letters (one of Pandit Nehru and another of Lord Mountbatten) seem to have discerned stirring moments of successive developments which have been embroiling, i.e. whether letters important or instrument of accession (unconditional) important. According to all canons of law, letters cannot be considered or perceived within the phrase of 1935 Act as well as 1947 Act. Letters not part under and of 1947 Act; it is law that prevails over unwritten law (letters); instrument of accession alone part of statutes and naturally its spirit is to be conceded. Law is superior to individual versions.

INDIAN COMPLAINT TO THE UNITED NATIONS AND SUCCESSIVE INTERNATIONAL DEVELOPMENTS

After Pakistan failed to deny to the invading tribesmen all use of its territory for operations against Kashmir, all military and other supplies, and all other aid that might prolong the struggle, and did not vacate Indian part of Kashmir (POK), Indian Government made a formal complaint to the United Nations Security Council on January, 1948. After both sides had put their case before the Security Council, it was agreed on January 20, 1948 that a commission of three members should visit India and Pakistan to investigate facts and report to the Security Council. There were sharp differences between two sides: India wanted to honour the commission provided Pakistan withdrew her army and tribesmen from POK, and unless and until Pakistan honour it Indian forces would stay to ensure external and internal security so long as Kashmir remained acceded to India. The Pakistan Government was reluctant to vacate POK and also to withdraw her forces as well as tribesmen. Accordingly, the Security Council adopted on April 21, 1948, a resolution containing the following proposals for the settlement of dispute:

1. The commission, whose membership would be increased to five, would place itself at the two governments' disposal to facilitate measures for the restoration of peace and the holding of a plebiscites.
2. Pakistan would withdraw all her nationals who had entered Kashmir to take part in the fighting, prevent such persons from entering Kashmir and refuse them all aid.
3. When the commission were satisfied that the tribesmen were withdrawn and an effective cease-fire was in force, India would reduce her forces in Kashmir to the minimum required for the maintenance of order.
4. The plebiscite would be conducted by a Plebiscite Administration headed by a Plebiscite Administrator appointed by the UN Secretary-General. During the plebiscites the Kashmir State forces and police would be under the supervision of the Plebiscite Administration.
5. To ensure that the plebiscite was completely impartial, the Kashmir government would be enlarged to include representatives of the major political groups in the State, and the Indian government would undertake to ensure freedom of speech, assembly and movement, the release of political prisoners, and guarantees against intimidation and victimisation.

The UN Commission, consisting of representatives of Argentina, Belgium, Columbia, Czechoslovakia and the United States, visited India and Pakistan in July, 1948, and put forward the under-mentioned proposals on August 13, 1948:

1. India and Pakistan would simultaneously issue a cease-fire order, would not augment the military potential of the forces under their control, and would create and maintain an atmosphere favourable to the promotion of further

negotiations. The commission would appoint military observers to supervise the observance of the cease-fire.

2. The Pakistan troops, whose presence constituted a material change in the situation, the tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting would be withdrawn. Pending a final solution, the territory evacuated by Pakistani troops would be administered by the local authority under the Commission's surveillance. When the tribesmen had withdrawn and the Pakistani troops were being withdrawn, the Indian Government would begin to withdraw the bulk of its forces in stages to be agreed with the Commission. India would maintain within the lines existing at the cease-fire those troops which the commission considered necessary for the maintenance of order.
3. India and Pakistan would enter into consultations with the commission to determine fair and adequate conditions whereby free expression of the will of the people would be ensured.

It may, however, be made clear that India accepted the proposals, but Pakistan remained reluctant and adopted proxy ways and means to put off the matter by alibi that only the POK Government could issue cease-fire orders. Pakistan refused to withdraw her forces as well as tribesmen which delayed the cease-fire on 31 December, 1948, and a new resolution known as truce resolution, by the UN Commission on 5 January, 1949, and accepted by India and Pakistan as follows:

1. The accession of Kashmir would be decided through a free and impartial plebiscite, which would be held when the commission found that the cease-fire and truce agreements set forth in Parts 1 and 2 of the resolution of August 13,

- 1948, had been carried out and arrangements for a plebiscite completed.
2. The UN Secretary-General would nominate a Plebiscite Administrator, who would be formally appointed by the Kashmir government.
 3. After Parts 1 and 2 of the resolution of August 13, 1948 had been implemented and the commission was satisfied that peaceful conditions had been restored, the commission and the Plebiscite Administrator would determine in consultation with India the final disposal of the Indian and State armed forces, and in consultation with the local authorities the final disposal of other armed forces.
 4. All Kashmir citizens who had left the State on account of disturbances would be free to return.
 5. All persons who had entered Kashmir since 1947 for other than lawful purposes would be required to leave.
 6. All authorities in Kashmir would undertake to ensure that there was no intimidation or bribery of voters in the plebiscite, that no restrictions were placed on legitimate political activity, that all political prisoners were released and that minorities were afforded adequate protection.

Though Plebiscite Administrator, Fleet Admiral Chester Nimitz—the US Naval Commander in the Pacific during World War II was appointed with an agreement between India and Pakistan, but it is an acknowledged fact that the Pakistan government was not only reluctant but declined to implement the truce resolution Parts 1 and 2, and as such subsequent developments took place when mediation attempts failed because of recidivist deviance on the part of Pakistan administration, and India's continuous stand that the aggressor and the aggrieved cannot be placed on the same footing. Be that as it may, the successive developments are known as Tashkent Declaration (1966) and Shimla Agreement (July 2, 1972). The Tashkent Declaration, *inter alia*, affirmed the intention of both the sides to settle their

disputes by peaceful means. However, it is intriguing that it led to no results, as Pakistan maintained that the most important issue to be discussed was that of Kashmir, whereas the Indian government continued, and rightly so because the historical truths cannot be eclipsed by teasing illusions, to uphold its view that Kashmir has been an integral part of India. The war of 1971 culminated into Shimla Agreement which, *inter alia*, provided to resolve the outstanding disputes through bilateral mechanisms.

The legality of the above-mentioned international resolutions would be discussed later.

NOTES AND REFERENCES

- 1a. As mentioned by A.G. Noorani while relying on Dr. Rajendra Prasad, see the *Statesman*, New Delhi, dated 16 and 17 June, 1992. It may be mentioned that Dr. Rajendra Prasad did not say anything about Article 370 (proposed 306-A) in the Constituent Assembly, see CAD, Vols. X-XII, pp. 421-429 (1989 Reprint).
1. See Jyoti Bhushandas Gupta, *Jammu and Kashmir*, pp. 17, 22; Sardar K.M. Panikar, *Gulab Singh—Founder of Kashmir*, 1930. It is well known that by 1842 Gulab Singh, though still a feudatory of the Sikh *Durbar*, had risen to great heights by his own efforts and had become master of Jammu, Ladakh and Baltistan, not to speak of his unique probing into Tibet proper. When Ranjit Singh died on 27 June, 1839, the Sikh power in India exploded and the British stepped in to fill the vacuum. The year 1846 saw the final collapse of the Sikh power in India with the conclusion of the First Sikh War between the British and the Sikh *Durbar*, and the British demanded from the defeated Sikh *Durbar* an indemnity of £150,000. This the *Durbar* was not in a position to pay; it offered instead all its hill territories from the Beas river to the Indus including Kashmir and Jammu. At this stage Gulab Singh expressed his readiness to foot the bill provided he was made the ruler of Kashmir. This culminated into a successful conclusion a treaty known as Treaty of Amritsar.
2. Id. at pp. 16-17; see also Frederic Drew, *Jammu and Kashmir Territories: A Geographical Account*, 1875; P.N.K. Bamzai, *A History of Kashmir*, 1962, pp. 14-19; J.D. Cunningham, *A History of the Sikhs*, 1955, p. 218.
3. Kalhana, *Rajatarangini*, in Sanskrit verses, composed in the 12th century AD.
4. Supra note 1; see also Durga Das, *Sardar Patel's Correspondence*, 1945-50, Vol. 1, 1971, pp. ix-xd, et. al.
5. *Ibid.*
6. *Ibid.*
7. *Ibid.*

8. *Ibid.*
9. *Ibid.*
10. *Ibid.*
11. *Ibid.*
12. *Supra* note 1, p. 38.
13. *Ibid.*
14. *Op. Cit.* 4.
15. *Ibid.*
16. *Id.* p. 39.
17. *Ibid.*
18. *Ibid.*
19. *Ibid.*
20. *Ibid.*
21. *Ibid.*
22. K.M. Panikar, *Op. Cit.*
23. *Supra* note 21.
24. *Op. Cit.*
25. *Ibid.*
26. K.M. Panikar, *Op. Cit.*
27. *Ibid.*
28. *Ibid.*
29. *Ibid.*
30. *Ibid.*
31. *Ibid.*
32. See, Jyoti Bhushandas Gupta, *Op. Cit.*, p. 39.
33. See, Mohammad Yusuf Saraf, *Kashmiri Right for Freedom*, Vol. I, 1977, Lahore, p. 238.
34. *Supra* note 1.
35. *Ibid.*
36. *Ibid.*
37. As quoted in Hariom, *Muslims of Jammu and Kashmir*, 1986, pp. 149-50.
38. *Supra* note 32, p. 40.
39. *Ibid.* Morley-Minto Act, 1909 and Montford Act, 1919 conceded the demands of separate electorates for Muslims.
40. *Ibid.*
- 40a. *Ibid.*
41. *Ibid.* See also Presidential address of Mohammed Iqbal delivered at Allahabad session of the All India Muslim League, December, 1930. Maurice Gwyer and A. Appadurai, *Speeches and Documents on the Indian Constitution*, 1921-47, Vol. I, pp. 435-40.
42. *Supra* note 32, p. 52, et. al.
43. See, P.N. Bazaz, *Kashmir in Crucible*, (Pamposh Publications); P.N. Bazaz, *Inside Kashmir*, 1941, pp. 100-101; P.N. Bazaz, *The History of Struggle for Freedom in Kashmir*, 1954, p.148, *Id.* pp. 53-55, Durga Das, *Op. Cit.*, p. ixxiv.
44. *Ibid.*
45. *Ibid.*
46. *Ibid.*

47. *Ibid.*
48. *Ibid.*
49. *Ibid.*
50. *Ibid.*
51. *Ibid.*
52. See, Jyoti Bhushandas Gupta, *Op. Cit.*, pp. 40-41.
53. *Op. Cit.*, n. 41.
54. *Op. Cit.*, n. 52.
55. *Ibid.*
56. *Id.* pp. 54-55, *Supra note 43.*
57. *Ibid.*
58. *Ibid.*
59. *Ibid.*
60. *Ibid.*
61. *Supra note 52 at p. 56.*
62. *Supra note 60.*
63. *Ibid.*
64. *Supra note 61.*
65. The four non-official members were P.N. Bazaz, G.A. Ashahi, Ghulam Abbas, and Lok Nath Sharma.
66. See, P.N. Bazaz, Durga Das, and Jyoti Bhushandas Gupta, *Op. Cit.*
67. *Ibid.*
68. *Ibid.*
69. *Ibid.*
70. *Ibid.*
71. *Ibid.*
72. *Ibid.*
73. *Ibid.*
74. See, Durga Das, *Op. Cit.*, at p. xxvii, see also Jyoti Bhushandas Gupta, *Op. Cit.*, pp. 66-68.
75. *Ibid.*
76. See, M.C. Mahajan, *Looking Back*, 1963.
77. See, Durga Das, *Op. Cit.*, pp. 13-15.
78. *Ibid.*; and note 74.
79. For detailed study see V.P. Menon, *The Story of the Integration of Indian States*, 1956.
80. Maharaja of Jammu and Kashmir in *Prem Nath v. State of Jammu and Kashmir*, A.I.R. 1959 S.C. 749 at 757.
81. See P.B. Gajendragadkar, *Kashmir Retrospect and Prospect*, at pp. 48-49.
82. *Ibid.*
83. Alan Campbell Johnson, *Mission with Mountbatten*, 1951, p. 120. Cf., Josef Korbel, *Danger in Kashmir*, 1954, p. 57, *Supra note 52*, pp. 82, et. al.
84. *Ibid.*
85. See, Lord Birdwood, *Two Nations and Kashmir*, 1956, pp. 46, 75.
86. See M.C. Mahajan, *Op. Cit.*, p. 226.
87. *Ibid.*
88. *Ibid.*

89. *Id.*, pp. 267-68.
90. *Id.*, p. 268.
91. *Ibid.*
92. *Ibid.*
93. *Id.*, p. 270.
94. *Id.*, p. 272.
95. *Ibid.*
96. *Id.*, p. 273.
97. *Id.*, p. 274.
98. *Id.*, p. 152.
99. Vide Durga Das, *Op. Cit.*, p. 341.

3

Constitutional Aspects of Article 370

"He that *will* not reason is a bigot
He that *cannot* reason is a fool
He that *dare not* reason is a slave"

—H. Drumond

I have attempted modestly an exposition of the events of the constitutional history of Article 370 thus having a clear as well as vivid perception of an animated debate on those constitutional legal imperatives which have become our masters and do not permit us to come out of the egg-shells. "It may be your interest to be our Masters, but how can it be ours to be your slaves", writes Thucidyes. It was a revisit to the historical events already known of the accession of Jammu and Kashmir to India. A succinct penumbra of historical events leading to the accession of

the State of Jammu and Kashmir neatly tell the trends for the integration of the State with the Union of India. This story sufficiently unfolds the mists of political notoriety played in the hands of those who mostly desired to keep the State on the Chessboard, and it may be enough to discern the correct constitutional aspects of an animated debate on the constitutional aspects of Article 370. It may, however, be observed that these events are neither cloudy nor misty and certainly do not convey the cloudy and confused thoughts.

To a question does Article suffer from the banishment of principles of the folly, short-sightedness or wickedness of men, suffice it to say that Pandit Nehru's sentimentalism could not appreciate the pragmatism of future constitutional relationship between Centre and the State of Jammu and Kashmir. The Drafting Committee of the Constituent Assembly of India drafted the Constitution of India which included the State of Jammu and Kashmir with a firm belief that the position of the State of Jammu and Kashmir was the same as that of the other Indian States; the provisions of the Draft Constitution were meant for the whole of the "Units of the Union in the new Constitution as States, whether they are known as Governors' provinces, or Chief Commissioners' Provinces or Indian States."¹

It discerns that the Drafting Committee did not appreciate the idea of making a special Constitutional provision for the State of Jammu and Kashmir because it believed in uniformity.² The story of inclusion of Article 370 (306—A proposed) is reported to be tricky and like this : That Pandit Jawaharlal Nehru reported to have sent Sheikh Abdullah to Dr. B.R. Ambedkar, the Chairman of the Constitution Drafting Committee and the then Union Law Minister, to introduce such an Article in the Draft Constitution of India. Being a nationalist and patriot, Dr. B. R. Ambedkar reported to have told Sheikh Abdullah after listening his plea for special status: "You want India to defend Kashmir, give Kashmiris equal rights all over India, but you want to deny India and Indians all rights in Kashmir. I am Law Minister of India. I can't be a party to such a betrayal

of National interests."³ However, it is intriguing to note that at this juncture Pandit Nehru entrusted the task for making the new provision in the Draft Constitution to Sir N. Gopalaswami Ayyangar who was also asked to present the same in the Constituent Assembly. It may, however, be not out of place to mention that the instrument of accession signed by Maharaja Hari Singh was unconditional, voluntary with free, fair and frank representation of mind joining with India and with no ifs and buts of inclusion of any special constitutional status for the State rather he aspired to have constitutional integration within the same constitutional culture. It was, however, the conditional letter of Pandit Nehru sent through M. C. Mahajan which created a sort of embrangle promise concerning the accession; secondly, it was the forwarding letter of Lord Mountbatten returning the acceptance of instrument of accession which conditioned the accession of Jammu and Kashmir to India and as such embroiled the situation to such an extent that the imbroglio has been perpetuating. It would be matter of sheer misconception to label Hari Singh for this sordid story of conditional accession. It is further a matter of irony to note that there was no popular demand from the populace of the State for special or separate constitutional status in case of the State. It was, however, only owing to the persistent persuasion as well as insistence of Sheikh Abdullah that an inroad was created for special constitutional safeguards in case of the State of Jammu and Kashmir. It may not be out of place to mention further that Sheikh and his few associates demanded to ease out Hari Singh and accommodate them in the affairs of the State. Nehru's love for Sheikh and hate for Hari Singh only culminated in this sort of whole episode of Article 370. Sheikh considered Jammu and Kashmir as his fiefdom, i. e. end of hereditary serfdom and giving rise to Sheikh's serfdom. It was under these circumstances that Article 370 (306—A proposed) was introduced in the Constituent Assembly on 17th day of October, 1949, and passed and adopted on the same day.⁴ It is surmising to note that only Nehru, Mountbatten, N. Gopalaswami Ayyangar and

Sheikh and his associates unduly sowed the seeds of short-sightedness which ultimately have been perpetuating a State of alienation as well as teasing illusion of majority brethren within the Valley from the rest of the State as well as country. Had the hungry look or lust of power not been the characteristics of Sheikhs, the Cascius hidden in Sheikh could not have emerged on the platform of the Centre and the State relationship on the one hand and international perspective on the other hand. It is on account of these reasons alone that the voice has been aired that the accession has been fraudulent. It is better recall the warning signalled by M.C. Mahajan : "Let the world judge whether the State has acted fraudulently in adopting underhand methods of acceding to the Indian Dominion or the Pakistan progenitors are clearly guilty of the conduct which they now seem to attribute to others".⁵ Had this fault not been there on the part of Pandit Nehru or Mountbatten or Sheikhs, Pandit Nehru could not have been compelled to echo his sentiments in a letter written to Sardar Patel : "(T)he prize we are fighting for is the Valley of Kashmir".⁶ Sardar Patel happened to retort "(the) vehement exponent of accession to India seems to have converted to an Independent Kashmir".⁷ And, naturally we have been experiencing the mysterious and consequences of Sheikh's gain both in India and abroad.

It may seem that an unrealistic approach of the few at the helm of affairs at that time only created a sort of constitutional void. Be that as it may, it may be submitted that the four representatives from the State (Sheikh Abdullah, Mirza Afzal Beg, Maulana Mohammad Saeed Masoodi, and Moti Ram Baigra) for the Constituent Assembly of India when signed the adopted Constitution of India, photographed along with Members of Constituent Assembly of India, could have desisted from airing further criticism on the accession of the State to India. It seems that Maharaja Hari Singh's voluntary and fair action of accession was accepted by the Sheikh which was further accepted by the Constituent Assembly of the State of Jammu and Kashmir within pursuance of the accession of this State to India as

an integral part thereof, the Union of India.⁸ Since Maharaja Hari Singh was the sole representative of his subjects being the sovereign of an Indian State and as such his action cannot be questioned. In this connection a reference may be made to a Privy Council judgement delivered by Lord Macmillan in *International Co. v. Niagara Parks*,⁹ wherfrom an answer to the question "Can any one with any semblance of justification say that the instrument of accession has not incorporated in Article 370 itself", can be seen "Whether the agreement is approved, rectified, confirmed, and declared to be valid as well as binding on the parties by an Act of the Legislature, the fact of this statutory confirmation is to render several provision and stipulation of the agreement as obligatory and binding on the parties as if these provisions had been represented in the form of statutory sections". Thus Accession is final and irrevocable by any standards of law, justice, morality, ethics, and international standards.

A further doubt has been aired that Pandit Nehru and N. Gopalaswamy Ayyangar and Lord Mountbatten gave a promise to hold a plebiscite in the State of Jammu and Kashmir in order to have accessed the free will of the people of the State. It is unnecessarily to raise this issue in the present scenario because the instrument of accession accepted by the Government of India, have had resolves of the so-called representatives of the population, the Constituent Assembly of India, Constituent Assembly of Jammu and Kashmir, 1954, Constitutional Orders (extension of the provisions of the Indian Constitution to the State of Jammu and Kashmir), 1954, 1962, 1986, etc., participation in elections—State Assembly as well as Parliament, have had the fruits of about 337 Central Laws since 1953, etc., have finally fearlessly and conscientiously exercised the right of free will of the people as well as plebiscite. Moreover, there is no demand for the free will or plebiscite by non-Muslims or even by all sects of the Muslims of the State and as such a voice of it by a handful of an ethnic group is a mere teasing illusion and not a reality. Further, the Shimla Agreement makes all the earlier promises of undertakings or International Resolutions of

1948 and 1949, etc. as absolutely redundant. In such a case a principle of *rebus sic stentibus* has to be applied in avoiding the performance of the promise. This doctrine is somewhat akin to the doctrine of frustration in the Law of Contract which provides that a state is exonerated from its obligation under an International Understanding if there is a vital change in the circumstances existing at the time the obligation was undertaken. There has been such vital change in the material circumstances since 1947 that it would be impossible to claim the performance of the undertaking now. Moreover, individual undertakings cannot override the written law or text of law; the fate of individual undertakings is similar to that of *personalis actio* and personal things or personal actions cannot be granted over law, or personal things cannot be done by another, or personal things die with the person, *viz.*, *mors omnia solvit* death dissolves all things and as such *mortis exitus non est exitus* a dead issue is no issue or *mortuus sine prole* dead without issue.

There is a feeling generating that a transitory provision be allowed to become perpetual provision of the Constitution of India thus perpetuating the alienation. It may be submitted that the Constitution itself does not allow to do a thing indirectly what cannot be done directly. Further, right from the inception of the Constitution a number of provisions of the Indian Constitution have been extended, as stated above, to the State of Jammu and Kashmir from time to time by Constitutional Orders of 1954, 1962, 1986, etc. By this it discerns that most of the provisions of the Constitution of India having been extended to the State of Jammu and Kashmir leaves little to retain the provisions of Article 370 in the Constitution of India itself. The retention of Article 370 at such a juncture naturally leads to generate a feeling of separatism, alienation, secessionism which is an unnecessary constitutional deadlock. Furthermore, a feeling that Article 370 is entrenched in the Constitution unrealistically makes to believe as saying everything is absolutism, whereas nothing is absolutism; a transitory or temporary provision cannot be classified as entrenched one in the *supreme lex*.

BASIC STRUCTURE OF THE CONSTITUTION

So far the discussion on Article 370 has been revolving around on singular contentious approach that it should be abrogated or deleted or taken away from the text of the Constitution of India because it permeates inequality, disintegration, disunity, and creates a class within a class of the same citizenry. The constitutionality of Article 370 is to be perceived from a constitutional approach which, *inter alia*, destroys the basic structure of the Constitution of India inasmuch as that the Constituent Assembly of India while adopting the proposed Article 306-A (now Article 370) effaced or abdicated its sovereignty by allowing to create a separate Constituent Assembly for the State of Jammu and Kashmir; it did not create any Constituent Assembly for any other State of the Union of India; it also delegated its essential features on the Constituent Assembly of Jammu and Kashmir to recommend for the repeal, deletion or abrogation or amendment of Article 370; it delegated Parliament's constituent making power under Article 368 a provision for the purposes of the amendment of the provisions of the Constitution of India. The basic premise of this significant issue creates a sort of confusion. Could there be another Constituent Assembly other than the Constituent Assembly of the Union of India? It is Constitutional philosophy, constitutional morality, and constitutional politics that there should be only one Constituent Assembly for the whole of India which enjoys the absolute power to make one Constitution for the whole of India, and this was also aspired by Hari Singh, as stated above, who wanted to see a place of integration of Jammu and Kashmir State within the framework of the Constitution of India. Agreed that there cannot be a separate basic structure of Jammu and Kashmir Constitution to that of the Indian Constitution, but the basic thesis is that it suffers from an inherent default of basic structure of the Constitution of India. Furthermore, it is the Parliament of India which enjoys the Constituent making power under Article 368 and how there could be another Legislative assembly to enjoy the constituent making power! That is to say that legislative assembly of Jammu and

Kashmir enjoying the powers of Constituent assembly would recommend for the deletion or abrogation or amendment of Article 370 to the President of India thus having a parallel status which is not enjoyed by any legislative (State) forum in the country. It is on account of this reason that Article 370 suffers from the default of basic structure theory.

There is an argument aired that there are other provisions in the Constitution of India which give special status to other States and then why there should be a hue and cry for Article 370. Articles 371, 371-A to 371-I mention about the special but temporary, transitional provisions with respect to the States of Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Sikkim, Mizoram, Arunachal Pradesh, and Goa. The language of these Articles is absolutely different from the language of Article 370. For instance, Article 371 empowers the President of India to provide special responsibility to the Governors of Maharashtra and Gujarat for the establishment of separate development boards for Vidarbha, Marathwada, and the rest of Maharashtra, Saurashtra, Kutch and the rest of Gujarat, etc.; for the equitable allocation of funds for developmental expenditure over these areas; and for the equitable arrangement providing adequate facilities for technical education and vocational training and adequate opportunities for employment in services, etc. Article 371-A mentions special provision with respect to the State of Nagaland, *viz.*, no Act of Parliament shall apply to the State of Nagaland in respect of religious or social practices of the Nagas, Naga customary law and procedural administration of civil and criminal justice involving decisions according to Naga customary law, ownership and transfer of land and its resources unless the legislative assembly of Nagaland by a resolution so decides. The Government / (Governor) of Nagaland has been given special responsibility with respect to law and order for so long as internal disturbances continue to occur in the Naga hills. The President of India shall direct the Governor of Nagaland to cease to have special responsibilities when there is no longer problem of law and order or insurgency. Both these Articles amply tell the tale that the special provisions for

these States have been incorporated in the Constitution to see that there is adequate as well as sufficient development in the tribal and hilly as well as neglected areas of these States. Similar provisions for Assam, Manipur, Andhra Pradesh, Sikkim, Arunachal Pradesh, Mizoram, and Goa have been incorporated in Articles 371-B to 371-I. A succinct scanning of these Articles tells that special Provisions outlined in these Articles are to promote the neglected areas or to promote the socially, educationally and economically neglected areas including the population of these States. These provisions of the Articles have been enjoined to promote social justice as avowed in the Constitution of India.

A scan reading of Article 370 tells altogether a different tale which is a pole apart and naturally creates misconceptions and misunderstandings. Article 370 seems to mention apparently those things which Sheikh Abdullah and his associates have had been propagating, namely, that the provisions of Indian Constitution would not extend to the State of Jammu and Kashmir unless and until approved by the Constituent Assembly of the State of Jammu and Kashmir. After the framing and adoption of Jammu and Kashmir Constitution by the Constituent Assembly of the Jammu and Kashmir—which was mostly containing the nominated members and not the duly elected representatives of the population of the State know that it is the government of the State which shall recommend for the extension of the central laws to the State of Jammu and Kashmir; and the constitutional relationship between the Union of India and the State of Jammu and Kashmir shall be determined by the application of Constitutional Orders of 1954, 1962, 1986. Prior to Constitutional Application Order of 1954 there happened to take place Delhi Agreement in the year 1952 which was on account of the objectionable speeches of Sheikh Abdullah. Prior to 1952, the constitutional position was like this that there would be a *Sadar-e-Riasyat*, the Prime Minister, centre's control over the State in relation to three subjects, namely, foreign affairs, defence, and communication, State High Court was to be the final court of justice and no control of Supreme Court of India, no fundamental rights, etc. The present crisis, therefore,

revolves around the contentious controversy of pre-1953 position which shall be discussed later.

Furthermore, it should not be forgotten that Article 370 is only a temporary and transitory provision in the Constitution of India, and allowing a temporary as well as transitory provision to linger on perpetuate the wrong done at one stage. Political compulsion of 1947 to 1949 (yester years) should not be a political compulsion of the present day time. Naturally, the retention would permeate wrong which could be counter-productive. Political promises made to someone (i.e., Sheikh who even did not represent the population of the whole State not even the entire majority community of the State) apparently gives the impressions that Sheikh's necessity became the compulsion again of someone, i.e., Pandit Nehru. In my opinion this is the basis of alienation of the majority population as well as State from the main stream of the nation, national progress and national interest. This implies that Article 370 has no relevance in the present scenario. It is a saying of an ancient philosopher that a truth, one dose not understand, becomes an error, and as such Article 370 has been the kingpin of the whole problem. For instance, it is imbued that right to self-determination can be exercised by the secessionists alone under the refuge of Article 370—a discussion about it shall follow; Article 370 gives wrong notions that there is a dual citizenship which is counter-productive of Indian Constitution. The notion of state subjects of the State of Jammu and Kashmir gives the impression outside that the State subjects of the State of Jammu and Kashmir enjoy special privileges, special status. Even when a male state subject marries a female who is non-state subject, the non-state subject female automatically enjoys the privileges of a state subject, whereas a state subject female losses her state subject status if she gets married to a non-state subject male outside the State of Jammu and Kashmir thus depriving her the right of succession as well as equality and other benefits under the law and the constitutional law. There is another anomaly of the controversy of state subject, namely, the persons who have migrated from West Pakistan have become the victims of politics; they cannot cast their

votes so far as the elections of State Assembly are concerned, but they can cast votes for the elections of Lok Sabha. Fundamental Duties incorporated in the Constitution of India by 42nd amendment of the Constitution of India in 1976 have so far been not extended to the State of Jammu and Kashmir, and, therefore, there is a scant regard for the fundamental duties in those sections of the society who believe in secessionism and anti-national attitudes, and that is why there are instances of the burning or destroying of the National Flag; showing disrespect to National Anthem; and caring a hook for the Constitution of India as well as constitutional institutions, etc. It is further an irony of fate that the non-state subjects cannot have immovable property within the State whereas the state subjects can have immovable property in other part(s) of the territory of India. Intriguingly, a child born to non-state subject within the State of Jammu and Kashmir cannot claim to be a domicile of the State of Jammu and Kashmir because of the peculiarity of state subjects notion. Even in the United States of America a child born to non-American within the territory of America acquires the status of an American citizenship, whereas such a child cannot acquire the status of a domicile of the State of Jammu and Kashmir. Does it not violate the basic principle of equality and rule of law as well as rule of life? It is further irony that in the whole of the country there is separate official emblem, i.e., Ashoka's pillar whereas there is a separate official emblem in the State of Jammu and Kashmir. Does it not permeate a sense of isolation and as such separatist? Why there should be a separate flag in the State of Jammu and Kashmir along with the National Flag when all the States of the Union of India use one National Flag Tri-colour Flag? Even in the United States of America all federal units use one national flag in spite of the fact that there are separate constitutions of federal units. In a system of quasi-federal and quasi-unitary type of constitutionalism should there be a separate constitution for the State of Jammu and Kashmir which is one of the federal units of the Union of India vide Article 1 and Schedules I and IV !

NOTES AND REFERENCES

1. See the forwarding letter of Dr. B.R. Ambedkar, Chairman of the Drafting Committee, dated 21st February, 1948, addressed to the Chairman of the Constituent Assembly of India, Dr. Rajendra Prasad along with the Draft Constitution.
2. Draft Constitution sent to Dr. Rajendra Prasad, Chairman, Constituent Assembly of India vide Dr. B.R. Ambedkar's letter dated 21st February, 1948.
3. *Vide Prof. Balraj Madhok, Kashmir Imbroglio Ignorance or Self-Deception, 9 May, 1992.*
4. *C.A.D., Vols. X-XII, 1989, Reprint, pp. 421-29.*
5. *Vide Durga Das, Op. Cit., p. 92.*
6. *Id., p. 262.*
7. *Id., p. 266.*
8. Section 3 of J&K Constitution.
9. A.I.R. 1937 P.C. 214.

4

Consequences of Retention of Article 370

1. TERRORISM, HUMAN RIGHTS AND RIGHT TO SELF-DETERMINATION

The Valley of Kashmir has been experiencing the escalating problem of terrorism since 1965; human rights activists have been raising the rhetoric of violation of human rights; and, above all, the secessionists/terrorists have been airing the demand of right to self-determination. The demand of self-determination is, unequivocally ill conceived and evil designed politically, socially, culturally, legally, because it is devoid of nationalism, national unity and integration. Rather, it odours the sadistic attitude of separatism, secessionism, and seceding the territory of India that is called *Bharat* from the union of States.

Those who demand self-determination either do not realise the true perspective of self-determination, or, knowingly misleading the mischievous as well as ulterior motives .

Evolution of Self-determination

The notion of self-determination as human right has strong emotional overtone as it has a long story as well as history behind it. It was formulated because of the effect of changing socio-economic-political relations as the response to threats brought about by aliens. The principle of self-determination of people gained world-wide importance between the two World Wars. Between the wars self-determination was understood as a political principle which recognised rights of people reiterating the principle of nationality. In the Covenant of League of Nations no express mention to self-determination was to be found. However, the Fourteen Points of President Wilson when implemented, a number of nations in Central and Eastern Europe gained independence; the term self-determination was used mainly to ethnic minorities living within the limits of a given territory inside a pre-existing state or empire; during World War II, two major aspects of self-determination were emphasised in the Atlantic Charter, viz., desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples to choose the form of government under which they will live and they wish to see sovereign rights and self-government restored those who have been forcibly deprived of them.

United Nations Charter and Self-determination

After the ceasing of the hostilities of World War II, the United Nations Charter assumed significance in the comity as well as polity of members of United Nations. One of the purposes of the United Nations as set out in Article I is "to develop friendly relations among nations based on respect for the Principle of equal rights and self-determination of people. . . ." Article 55 which deals with international

economic and social co-operations reads : "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of people. . ." Article 73 of Chapter XI concerning "Declaration regarding Non-self-Governing Territories" provides that "Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognise the principle that the interests of the inhabitants of these territories are paramount . . . and to this end . . . to develop self-government." Article 76 of Chapter XII captioned as "International Trusteeship System" provides that "The basic objectives of the trusteeship . . . shall be to promote the political, economic, social and educational advancement of the inhabitants . . . and their progressive development towards self-government or independence as may be appropriate . . ." Article I of International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights also recognise the right of self-determination. The United Nations General Assembly mindful and conscious of its objectives made a Declaration on the granting of Independence to Colonial Countries and Peoples (vide General Assembly Resolution 1514(XV) of 14 December 1960) by "recognising the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence (from foreign rule for colony)", and "believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith", and declares that "The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of World Peace and co-operation. All peoples have the right to self-determination; by virtue of that right they freely pursue their economic, social and cultural development. . . All States shall observe faithfully and strictly the provisions of the Charter of the

United Nations, the Universal Declaration of Human Rights and the Present declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity".

The above-mentioned international instruments neatly demonstrate that right to self-determination is secured to the peoples under colonial rule, and according to the widely adopted present day view only peoples under colonial rule have the right to self-determination, which involves accession to independent Statehood. It does not matter how the population of such territory is ethnically composed. As soon as independent Statehood is reached, the territorial integrity of the Country is protected against any attempt to destroy national unity, even if the given ethnic group is in this way brought under alien domination.

Thus the right to self-determination is expressly related to colonial peoples. Interpretation of that kind can be inferred from Resolution VII of 11th May, 1968, adopted by the International Conference on Human Rights: "The importance of the Universal Resolution of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights". The Conference called upon the General Assembly to draw up a specific programme for the granting of independence to territories under colonial rule and called upon the Security Council "to resume consideration of the question of decolonization and expedite the granting of independence and self-determination of colonial peoples and countries."

United Nations General Assembly Resolution 637 A / VII declares that "the right of peoples and nations to self-determination is prerequisite of the full enjoyment of all fundamental human rights", and recommended that United Nations Members "uphold the principles of self-determination of all peoples and nations".

The wider interpretation of the right to self-determination discerns the necessity to liquidate racial discrimination and apartheid in colonial and dependent territories and a total eradication of racial discrimination,

apartheid and violation of the human rights of the people in colonial territories will be achieved most expeditiously by the faithfully and complete implementation of United Nations Declaration.

It may further discern that numerous Resolutions concerning the right to self-determination refer not only to peoples under colonial domination but also to peoples under alien domination. Case of South Africa and Palestinian people is a pointer in this perspective. The right to self-determination mentioned in the international instrument, asserts a right for peoples to be granted independence and create their own State for freely determining their political status and freely pursuing their economic, social and cultural development over natural resources. Not only people under colonial rule are entitled to it but also peoples under alien and racist domination. The General Assembly considered vide Resolution 2649/XXV of December 1970 that "the acquisition and retention of territory in contravention to the right of people of that territory of self-determination is inadmissible and gross violation to the Charter". This wider concept of the right to self-determination is adopted in the provisions of the African Charter on Human and Peoples' Right.

The right to self-determination does not imply the right to secession for minorities groups living in an independent State. The right to self-determination relates to liberalisation from external dependence from another State. There cannot be a right to self-determination (internal) which is political self-determination, and reducing the right of internal self-determination only to political self-determination is devoid of all canons of international instruments. In this context a mention of the Vienna Declaration of 14-25 June, 1993 and Copenhagen Declaration of 1995 is imperative as both present "a new vision for global action for human rights into the next century" in general, and right to self-determination in particular since both discard that right to self-determination which aims at secessionism as well as impair the territorial integrity or political unity of sovereignty and unity, integrity and sovereignty of a nation. Vienna Declaration reads: "All peoples have the right of self-

determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development. Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the World Conference on Human Rights recognises the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realise their inalienable right of self-determination. The World Conference on Human Rights considers the denial of the right of self-determination as violation of human rights and underlines the importance of the effective realisation of this right. *In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Co-operation amongst States in accordance with the Charter of the United Nations, this shall not be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind."*

Kashmir and Right to Self-determination

The State of Jammu and Kashmir was neither a colonial State nor under alien rule nor a trusteeship. It was a sovereign State under the rule of a sovereign like other Princely States. It joined the Union of India through the instrumentality of Instrument of Accession on 26-27 day of October, 1947. The Instrument of Accession was in conformity with the provisions of Indian Independence Act, 1947. It was same instrument as was signed by other Princely States. Accession was confirmed by the Constituent Assembly of India by making Jammu and Kashmir as an integral Part of Indian Union; Jammu and Kashmir Constituent Assembly, 1954 and Jammu and Kashmir Constitution itself. By this act the people of the State of Jammu and Kashmir have freely and finally exercised their

right to self-determination. Obviously, neither the Constitution of India nor State Constitution makes any reference to right to self-determination. Since accession of the State with the Union of India Mr. Sheikh Mohammed Abdullah and his associates had been advocating for disaffiliation though they were participants as nominees and signatories of the Constitution of India. Their attitude was oscillating and this apostate attitude culminated in a movement of secessionism which now seems to have taken the shape of *Azadi* or self-determination.

The Kashmiris have been airing the voice of *Azadi* or self-determination. Question arises: *Azadi* or self-determination from whom? Once self-government has been finally formulated within the basic structure of the Constitution of India then where is the question of further self-government or independence? As already explained above there cannot be further self-government and internal independence because there is no canon of international law or national law to have a sovereign State within a sovereign State. Even if we assume for a moment the issue of plebiscite, it would be in the right earnest to state that the people of Jammu and Kashmir once finally accepted the resolves of Constituent Assembly of India, Constituent Assembly of Jammu and Kashmir, 1954, Constitutional Orders, 1954, 1962, 1986 etc., Participated in elections, have had the fruits of national mainstream, cherished the fruits of 337 Central Laws since 1953 etc. have finally fearlessly and conscientiously exercised this right. There is no question of further self-determination (internal). Kashmiris are emphasising for the right to self-determination, and such propaganda stirs whether Kashmiris (a few handful of an ethnic group) are the sole voice of the whole population of Jammu and Kashmir in this regard? Certainly not. Seeking self-determination by a handful of erratics means secessionism and seceding the territory of an integral part of the Union of India. In the words of Dr. B. R. Ambedkar that India is a Union of States and any demand for seceding any part of its territory is not permissible constitutionally, for that is against not only

the basic structure of the Constitution of India but also against the spirit of Indian-Nationalism.

Here a mention may be made to an activist decision of the Federal Constitutional Court of Germany which interpreted the clause of the Basic Law permitting self-determination in national interest leading to sustenance as well as perseverance of constitutionalism and democracy; if self-determination violates constitutionalism and democracy then it must be restricted and not allowed to operate. In this case the federal government had suspended State (*Land*) elections and directed reorganisation of election districts in order to facilitate the unification of the three south-western States of Baden, Württemberg-Badan and Württemberg Hohenzollern. The case came to be known as *South-west State case* (1951). This was the first case decided actively by the Federal Constitutional Court. The small and cohesive 150 year old State (*Land*) of Baden challenged the constitutionality of federal government's statute on the ground that they violated the principles of democracy and federalism : democracy because the electoral districts were created in such a way as to dilute the votes of persons casting ballots in Baden; federalism because the federal government is powerless to tamper with the legislature of an independent State. The Federal Constitutional Court negated a national law, and also restricted application of Constitutional (Basic Law) Article relating to self-determination for the first time. The Federal Constitutional Court declared the First Reorganisation of State Law as null and void as inconsistent with the Basic Law and asserted that an individual constitutional provision cannot be considered an isolated clause and interpreted alone. A Constitution has an inner unity, and the meaning of any one part is linked to that of other provisions. Democracy and federalism are two fundamental principles of the Basic Law. It is true that, in order to effect reorganisation, the federal legislature has power to retrench the south-western States. But it cannot disturb the constitutional structures of these States as long as they exist in their entirety. In view of these legal restrictions, neither reasons of practicality, political necessity, nor similar considerations can confer unfettered discretion on the federal legislature to enact any regulations

that seem reasonable and proper under the guise of reorganisation of States. *In principle a people must themselves determine their basic order follows from the notion of democracy. But it is the nature of things that the people's right to self-determination in a State be restricted in the interest of the more comprehensive unit.*

It may be submitted that the quintessential inference of this case is the development of human dignitarian jurisprudence *vis-a-vis* the State, *viz.*, "Man is a spiritual being". It refers to "man as an autonomous person who develops freely within the social community." The focal point of it is the value and dignity of the individual, who functions as a member of a free society in free self-determination. It may be equated with "to the free development of personality" as a spiritual moral being. The entire German people, as per the dictum in Southwest case, is called upon to achieve, by free self-determination, the unity and freedom of Germany as one country. It is precisely this human right that afford the individual citizen the possibility of taking part in political life of the Indian system as well as polity within the rubrics of Constitution of India. Naturally, the self-determination demand *a multo fortiori* should and ought to be in this perception as well as perceptive, *viz.*, to achieve the avowed goals by free self-determination of Unity, Integrity, Fraternity and Freedom, Liberty, and Equality of India to make India Bharat more and more strong democracy in the world. The Indian political comity must sufficiently learn some message contained in the above-mentioned case, and gather courage to tell the secessionists as well as terrorists in unequivocal language that right to self-determination cannot be considered in national interest. So far and so long, Article 1 continues to remain an integral as well as irrevocable part of the Union of India, *Bharat*, and right to self-determination does not befit in this comity.

2. CLAMOUR FOR PRE-1953 POSITION HIGHLY DANGEROUS

The dismissal of the Sheikh in 1953 ushered in a new era — an era of hope, an era of more closeness with India, an era of strengthening the State-India ties. The lesson had

been learnt and the old Kashmir policy reserved. A more realistic perception came into play. From 1954 to day thirteen steps have been taken to extend various provisions of the Indian Constitution to the State of Jammu and Kashmir, *viz.*, through 1954 Presidential Order, financial integration was affected. The operations of Customs, Central Excise, Civil Aviation, Posts and Telegraphs were extended. In 1958, All India Services—IAS, IPS and IFS—were introduced. Functions of Comptroller and Auditor General were extended. In 1959, the legislative entry relating to Census was applied as a result of which the census of 1961 could, for the first time, be conducted under the Central Law. In 1960, Supreme Court of India was given the powers to give special leave to appeal from the decisions of the High Court of Jammu and Kashmir. The elections to either House and the resolution of doubts and disputes relating to them were placed under the supervision of the Election Commission of India, although they continued to be conducted according to the laws of the State Legislature. In 1961, the legislative entry relating to Industries, the control of which by the Union is declared by law to be expedient in public interest was applied to the State of Jammu and Kashmir and it enabled the extension of the Industries (Development and Regulation) Act, 1951, subsequently. In 1964, Articles 356 and 357 of the Constitution of India were applied to the State (that is, President's Rule). In 1965, a number of Legislative entries relating to the welfare of labour, trade unions, social security and social insurance were applied. As a result of this a number of Central Labour Laws were extended. In 1966, the provisions of the Constitution relating to the elections of the representatives to Lok Sabha were applied. In 1968, entry 97 of the Union list (relating to the residuary powers of the Legislature) of the Constitution were applied in modified form and as a consequence, the Unlawful Activities (Prevention) Act, 1967 was extended subsequently. In 1971, Article 226 which relates to the Powers of the High Courts to issue certain writs made applicable. In 1972, entry 60 of the Union list (relating to the sanctioning of cinematography films) was applied on 24th February, 1972. In 1986, Article 249 was extended.

Chartered Accountants Law, Coinage Act, Companies Law, Comptroller and Auditor General Act, Conservation of Foreign Exchange and Prevention of Smuggler Activities Law, Contempt of Courts Law, Customs Law, Copyright Act, Dangerous Drugs Act, Delimitation Act, etc. have been extended to the State of Jammu and Kashmir from time to time from 1953 till date (in all 337 laws). It is a matter of immense interest to note that even after assuming the reigns of administration of the State in 1975 (lasted till his death in 1982) by Sheikh Mohd. Abdullah about 21 Central Laws were extended to the State of Jammu and Kashmir. The roaring Sheikh who always cried for withdrawal of Central Laws from their prevalence in the State realised the importance of such laws for the welfare of the people of the State naturally became a party to their extension. What a paradox of Sheikhs and their associates! It is further surprising to note that Sheikhs constituted an expert committee headed by Shri D.D. Thakur (former Judge of the State High Court and a cabinet Minister in his Cabinet) to review the application of Central Laws in the State of Jammu and Kashmir and to recommend the repealing of those laws which did not suit Sheikh's ill designs. This committee, *inter alia*, did come to the conclusion that these Central Laws were unequivocally for the welfare of the people of the State as these laws brought the populace of the State in main national stream, and, hence their repealing/deletion was recommended to be undesirable and against national weal and interest.

The restoration of pre-1953 status would be a great challenge to the People of Jammu and Ladakh. It would mean not only the negation of over 40 years' efforts of the people of the State to bring in democratic and secular traditions by the adoption and extension of 337 Central Laws duly ratified by the State assemblies but it will also be a highly retrograde step towards annulling the progressive march of the people and will amount to entrusting the fate of the unwilling people into the hands of fundamentalists, terrorists and rank communalists. Such a course is fraught with many dangers and disabilities. To mention only a few glaring ills of such a step the jurisdiction of Supreme Court

would be set aside which will annul its power to review the verdict of the High Court and other correlated matters, with the objective of fair play as available to the rest of the aggrieved citizens of India involved in litigation. The operation of Articles 356 and 357 of the Indian Constitution would cease to have jurisdiction over the State and would lead to glaring constitutional and legislative anomalies and chaos. State's separate Constitution provides Governor's rule only for a maximum period of 6 months and there is no scope whatsoever for extension of Governor's rule in the State. This makes holding of elections within the stipulated Period of Governor's rule mandatory irrespective of the law and order or any other hostile environment as it exists at present. It is the extension of these Articles 356 and 357 to the State that has made it possible for Presidential intervention in the larger interests of the State and for the safety of the people of the State or any of its sections against oppressive and harmful actions and legislation by the State Government. The withdrawal of these Articles will result in dictatorship and even theocracy and autocracy of the powerful junta who could amend State Constitution to suit their ambitions. Although it is a hypothetical postulation one shudders to think of the disastrous consequences besides complete break down of the Constitution if these Articles are abrogated from their application to the State of Jammu and Kashmir. Present terrorist activities abetted by Pakistan would not have permitted free and fair elections and it would have split blood all over the State and people would have been enslaved by a band of armed fundamentalists aided by foreign powers and would have bled profusely without any hope of redress, and the national government would have been rendered as a helpless as well as hapless spectator to the drama of blood and iron. Security of the borders would have been exposed to the bellicosity of the hostile neighbour causing disintegration of the country. Such would have been, and can be, the repercussion of the abrogation of a couple of Articles of the National Constitution in the State.

Reversion of pre-1953 position would mean abrogation of these Articles and 337 Central Laws; and one shudders

and stirs to conceive of the horrible environment which will be generated by such an insane step. It would amount to entrusting the innocent people of the State to almost mad fundamentalists with unlimited, yet unchecked power to do evil, with an anti-India and pro-Pakistan stance. The forces who are responsible for creating the present situation in Kashmir Valley have, in spite of the operation of Central Laws and Articles 356 and 357, betrayed their hidden motives by getting cleared by State Assembly such a heinous measure as Re-settlement Bill intended to rehabilitate millions of Pakistanis in Jammu region from which a large chunk of Muslim population migrated to Pakistan at the time of Partition of the country in and around August, 1947. It is the operation of the Central Laws that saved the situation. The same Bill is still lying with the Supreme Court for final adjudication vide a Presidential reference under Article 143 of the Indian Constitution.

At the same time a private resolution was presented in the State Assembly proposing to declare Jammu and Kashmir an Islamic State to be ruled as per dictates of the *Nizam-i-Mustafa*. It was not considered by the Assembly probably out of fear of strong reaction in the country. But, if pre-1953 position is restored, these two and several similar legislative measures will surely be on the anvil considering the bigoted and communal as well as separatist ideology of the groups and leaders with whom the central leadership sometimes proposes to hold talks over and above the heads of the people of Jammu and Ladakh including Gujjars, Jammu Muslims, Buddhists, Christians, Kashmiri Pandits.

Would the people of the State and over 40 lakh pilgrims to Holy Vaishno Devi Shrine, tourists and traders like that their free egress from and ingress into, State be hampered by a *visa type permit system* which was in operation till March 31, 1953 at great inconvenience to Indian citizens on both sides of the Ravi. You may or may not like but this system would come back in case pre-1953 position is restored. And, the worst of it entry to any Indian citizen would be denied by refusing to issue permit to him at the sweet will of the State bureaucracy/rulers.

What would be the fate of the National Symbols like the tri-colour National Flag, the National Anthem and the others? Certainly these will be banished from the State as the State's separate Constitution does not recognise them, and these have been given access to the State by "courtesy" vide an understanding between Pandit Jawaharlal Nehru and Sheikh Mohd. Abdullah in 1952. It is understood that the fundamentalists and extremists forces will no longer tolerate these, more especially when they are threatening to draft a new Constitution for the State true to the Islamic, and un-Indian rather anti-India ideals as well values.

Worst of all, the restoration of pre-1953 status, abrogating Articles 356 and 357, and jurisdiction of Supreme Court over State as well as other such Central Laws, the judiciary in the State would lose independence and would become a hand-maid of the executive, i. e., the Chief Minister and his cabinet, who will then rule the roost in Jammu and Kashmir and thus drive the innocent public like sheep and goat in absence of any super agency to check them and provide redress to people's grievances. Such supremacy of the wonderland of the bureaucracy over judiciary (nowhere to be seen in any democratic set up in the world) will lead to theocratic autocracy, totalitarianism and dictatorship worst than any which has ever existed anywhere in the world. This, however, will be a natural corollary of such a retrograde step full of covins.

This also would lead to an abrupt disintegration/secession of the State at any further date, even if disintegrating forces are somehow kept yoked to the union of India at present. And during their stay with India they will have free hand to set up theocracy in the very face of Indian secularism, which is their declared goal. What an anomaly! What our ardent protagonists of secularism would say in this matter and what "secularism" would imply? It would also mean limited accession in three subjects only — defence, communication and finance. The subsequent bound of the fundamentalists would be complete secession unless a strong military action by Indian security forces foil it in time. As fundamentalists would be wiser to mount such an adventurist course after due preparation, military action on

the part of India will be a serious affair and will be sure to involve world powers, and at least the Muslim block actively. Then why not to resort to full military action now to flush out militants, insurgents and fundamentalists, now when Jammu and Kashmir State is an integral part of India.

Such a course in future by militant fundamentalists is no longer anybody's guess work. It is their declared policy, and they have publicly decided to redraft the Constitution of Jammu and Kashmir throwing over board the present one. The militant outfits have already appointed the retired Chief Justice of the State High Court Mr. Mufti Bahu-ud-Din as the Convenor/President of the Proposed Constitution Committee to draft such a Constitution. They intend to pressurise central leadership with the aid of Muslim countries and other interested countries to come to terms with them on the condition of nullifying Instrument of Accession and recognition of their draft Constitution, maintaining relation with India, possibly, on pattern of Bhutan or the new confederation of Russia.

Before bowing down to such international pressure the central leadership should bear in mind that accession of native States to Indian Union, including Jammu and Kashmir State, is final and irrevocable. Dr. B.R. Ambedkar has declared secession from Indian Union as impossible, not feasible once it has been consummated. He said: "The Indian Federation was a Union because it was indissoluble, and no State had a right to secede from the Indian Union." (*Constituent Assembly Debates*, Vol. VII). Even Jammu and Kashmir Constituent Assembly, while drafting Jammu and Kashmir State Constitution, has passed a resolution to the effect that accession of the State to India is irrevocable and final. And it should be noted that Sheikh Mohd. Abdullah, Mirza Afzal Beg and Maulana Muhammad Syed Masoodi were present and witness to this resolution, along with other members of the Constituent Assembly as representatives of the whole population of Jammu and Kashmir. U. S. A. had to fight a bloody civil war to maintain her integrity and stem the evil of secession. India should also adopt a similar attitude.

5

Conclusion

Whatsoever the constitutional niceties may be, but one has to look afresh to the constitutional imbroglio of the State of Jammu and Kashmir *vis-a-vis* the Union of India. Had there not been some wrong on the constitution framework of Article 370 then why there was acceptance by Pandit Jawaharlal Nehru, Smt. Indira Nehru Gandhi and even the leftists when Shri Atal Behari Vajpayee introduced the motion in the Parliament of India for the abrogation of Article 370. It is different story that why the move for the abrogation of this Article was not adopted at that time in spite of the unanimous opinion of the wrongful nature of Article 370.¹ Sarkaria Commission while examining the constitutional problems in matters of Centre-State Relationship, happened to spell the constitutional problem of Article 370 and happened to take a mid-way approach which, if read carefully, shows a serious concern of Sarkaria Commission with regard to the wrongful nature of Article

370. In *annus mirabilis* (remarkable) words of the Sarkaria Commission: "... we should like to re-emphasise the axiom that every action which is legally permissible may not be unnecessarily burdened or appropriated from the political stand point".²

Lastly, it seems that the Political elites have "... Willing to-wound-but-afraid-to-hurt" attitude in case of Article 370. Be that as it may, sooner the Article 370 is abrogated, better it would be for the development of constitutional morality and constitutional politics in right perspectives; it would also desist the perpetuation of wrongs. It is hopefully believed that the abrogation of Article 370 would permeate a feeling of integration, unity and fraternity thus cementing the relationship of unison. Let the political elite arise above the petty and tiny political interests and look to the writings on the walls of the country that Article 370 is nothing but creating a sense of alienation, separatism, secessionism, disintegration, destroying the basic structure of the Constitution of India; and its erasing from the *supreme lex* would develop the sense of one Nation, common brotherhood, and bringing those to the national mainstream who have had lost sight of national values.

Here a mention may be imperative as well as expedient regarding the decision of the High Court of Azad Jammu and Kashmir dated 8 March, 1993, because this decision also *ipso facto* makes clear the position as well as status of POK *vis-a-vis* Pakistan and India's stand that nothing short of POK is the only outstanding issue between India and Pakistan which has to be resolved amicably as well as bilaterally under the Shimla Agreement. The judgement in this case was delivered by the Chief Justice of the High Court Mr. Justice Abdul Majeed Mallick against a writ petition of *Malik Muhammad v. Government of Pakistan and others*. The petition raises a very crucial issue in respect of administrative, political and geographical status of the Northern Areas of Jammu and Kashmir as on August 15, 1947, at the time of emergence of Pakistan (independence of the sub-continent) and earlier. In case of positive answer, whether these areas should be annexed to Azad Jammu and Kashmir and be brought under the administrative

control of the Azad Government of Jammu and Kashmir, is the main relief sought in the petition. Besides, the petition sought for creating administrative and judicial machinery therein by providing due representation to the people of the areas in the Azad Jammu and Kashmir Legislative Assembly and the Council, and restoration of civil liberties and rights admissible to these people of the areas. As the people of these areas were not associated with the administrative as well as political process, it was realised, with the passage of time, that these people were deprived of their basic human rights, including the right of representation and administration. Thus, an effort was made to seek redress of their grievances at various government and political levels. On failing to attain the desired results, the controversy was raised in this petition. It was proved beyond any doubt and any objection by the Pakistan government that the Northern areas of the State were part of Jammu and Kashmir as on August 15, 1947; it was also acknowledged that Kashmir issue was buried in deep cold storage of archives of the UN Security Council (in 1965 when Mr. Z.A. Bhutto hurled abuses on India and Indian delegation led by late S. Swaran Singh, the then Foreign Affairs Minister, walked out of the Security Council, and since then the Kashmir question has never been raised in UNO or UN Security Council); the term Northern Areas applies and includes Gilgit, Baltistan and Frontier Illaqas, *viz.*, Hunza, Nagar, Punial, Yasin, Kuh, Ghizar, Ishkoman and Chilas; it has been indisputably concluded that the Northern Areas have been and are parts of Jammu and Kashmir State; benefit in such conclusions was taken from the provisions of the Independence Act, 1947; Pakistan was evasive in her reply because Pakistan knows that her stand on Jammu and Kashmir is myth and illusory and as such she did not deny specifically or by implication inasmuch as that failure of Pakistan to controvert the question of fact appears to be an attempt to misdirect from the real question in controversy and this will amount to an admission on the part of Pakistan; Constitution of Pakistan of 1973 dose not include Jammu and Kashmir in her territorial as well as geographical limits rather in Article 257 it states that: "When the people of the

State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and that State shall be determined in accordance with the wishes of the people of that state." In the backdrop of this the court arrived at the conclusions that the Northern Areas are and have been part of the state of Jammu and Kashmir as it existed before and on August 15, 1947; that it is enjoined upon the government to establish democratic institutions, administrative bodies and courts of law; that the Azad Government and its status is *ad hoc* and *de facto* as acknowledged by UNO; that Northern Areas do not form part of the territories of Pakistan as defined in the Constitution of 1973 and therefore these areas are part of the State of Jammu and Kashmir; that the government has failed to explain as to why the residents of these areas may be kept deprived of the benefits of fundamental rights, civil liberties and right of their representation in the government and other national institutions.

In the backdrop of this significant judgement, it is now imperative for the government of India to tell *a fortiorari* to Pakistan that it has no other alternative but to come to sensitive terms of bilateral talks according to Shimla Agreement and leave her obdurate aggressive attitude against India. It may be pertinent to state that obdurate attitudes desist the developmental programmes in the areas of economy, commerce, trade, culture, scientific, education, etc. One may learn lessons from the amelioration or lessening of obdurate attitudes in Europe that Europe has been progressively advancing in economy, commerce, trade, intercourse, cultural interactions, and forming of European Union. There is enough lesson for forming an Asian Union.

Be that as it may, there is a persistent question as to how to abrogate Article 370 when there is imposition of President's rule in the State of Jammu and Kashmir under Article 356 of the Constitution of India. In this connection it may be submitted that when there is Governor's rule in the State for the first six months under Sections 91 and 92 of Jammu and Kashmir Constitution then the Governor of the State assumes constitutional, legislative and executive

powers of the state and acts as a legislature because the laws made by him shall have the force as the laws passed by the state legislature. In such a case Governor on his own recommend to the President of India for the abrogation of Article 370 and the President of India can make it place before the both Houses of Parliament through the constitutional democracy. After the ceasing of the Governor's rule and imposition of the President's rule under Article 356, in such eventuality the Parliament of India acts as the legislature for the State for the purposes of making the laws, approving the financial budget, etc. And, at such a juncture the Parliament stepping into the shoes of the State legislature can, if it so desires, take up the process of the abrogation of Article 370. The only question remains to be the will of the Parliament.

The above delineation proves beyond doubt the truth of the Jammu and Kashmir imbroglio or tangle that it is beautiful but deceitful, it is attractive but deceptive, it is bewitching or enchanting but full of betrayals. Political elites have so far been trying to make us believe the three Cs of the Jammu and Kashmir imbroglio, i. e., trying to Convince Jammu and Kashmir tangle of their own short-sighted perception, to confuse the issue when they failed to convince, and corrupt the issue when they could neither convince nor confuse, and that is the genesis of the whole imbroglio or tangle.

NOTES AND REFERENCES

1. See, A.B. Vajpayee, Parliamentary Debates.
2. Sarkaria Commission on Centre-State Relations, Part I, 1988, pp. 87-89, at p. 89.

APPENDIX I

Amritsar Treaty, 1846

Treaty between the British Government on the one part and Maharajah Gulab Sing of Jummoo on the other, concluded on the part of the BRITISH GOVERNMENT by FREDERICK CURRIE, ESQUIRE, and BREVET-MAJOR HENRY MONTGOMERY LAWRENCE, acting under the orders of the RIGHT HONOURABLE SIR HENRY HARDINGE, G.C.B., one of HER BRITANNIC MAJESTY'S MOST HONOURABLE PRIVY COUNCIL, GOVERNOR-GENERAL, appointed by the HONOURABLE COMPANY to direct and control all their affairs in the EAST INDIES, and by MAHARAJAH GULAB SING in person,—1846.

ARTICLE 1

The British Government transfers and makes over for ever, in independent possession, to Maharajah Gulab Sing and their heirs male of his body, all the hilly or mountainous country, with its dependencies, situated to the eastward of the river Indus and westward of the river Ravee, including Chumba and excluding Lahul, being part of the territories ceded to the British Government by the Lahore State, according to the provisions of Article IV of the Treaty of Lahore, dated 9th March, 1846.

ARTICLE 2

The eastern boundary of tract transferred by the foregoing Article to Maharajah Gulab Sing shall be laid down by the Commissioners appointed by the British Government and Maharajah Gulab Sing respectively for that purpose, and shall be defined in a separate Engagement after survey.

ARTICLE 3

In consideration of the transfer made to him and his male heirs by the provisions of the foregoing Articles, Maharajah Gulab Sing will pay to the British Government the sum of seventy-five lakhs of Rupees (Nanukshahee), fifty lakhs to be paid on ratification of this Treaty, and twenty-five lakhs on or before the first October of the current year, A.D. 1846.

ARTICLE 4

The limits of the territories of Maharajah Gulab Sing shall not be at any time changed without the concurrence of the British Government .

ARTICLE 5

Maharajah Gulab Sing will refer to the arbitration of the British Government any dispute or questions that may arise between himself and the Government of Lahore or any other neighbouring States, and will abide by the decision of the British Government.

ARTICLE 6

Maharajah Gulab Sing engages for himself and heirs to join, with the whole of his Military Force, the British troops, when employed within the hills, or in the territories adjoining his possession.

ARTICLE 7

Maharajah Gulab Sing engages never to take or retain in his service, any British subject, nor the subject of any European or American State, without the consent of the British Government.

ARTICLE 8

Maharajah Gulab Sing engages to respect, in regard to the territory transferred to him, provisions of Articles V., VI., and VII. of the separate Engagement between the British Government and the Lahore Durbar, dated March 11th, 1846.

ARTICLE 9

The British Government will give its aid to Maharajah Gulab Sing in protecting his territories from external enemies.

ARTICLE 10

Maharajah Gulab Sing acknowledges the supremacy of the British Government, and will in token of such supremacy present annually to the British Government one horse, twelve perfect shawl goats* of approved breed (six male and six female), and three pairs of Cashmere shawls.

This Treaty, consisting of ten articles, has been this day settled by Frederick Currie, Esquire, and Brevet-Major Henry Montgomery Lawrence, acting under the directions of the Right Honourable Sir Henry Hardinge, G.C.B., Governor-General, on the part of the British Government, and by Maharajah Gulab Sing in person; and the said Treaty

* In 1850 it was arranged by mutual consent that the Maharaja should present, instead of three pairs of long shawls, three square shawls.

On the 13th March 1884, it was further arranged by mutual consent that the Maharaja should present, instead of twelve goats, 10 lbs. of pashm in its natural state as brought to Kashmir from Leh. 4 lbs. of picked and assorted black wool, 4 lbs. of ditto ditto grey wool, 4 lbs. of ditto ditto white wool, and 1 lb. each of the three best qualities of white yarn. On the 16th May 1893, the Government of India decided that the horse, trappings, pashm, and yarn which formed a portion of the annual tribute from the Kashmir State would no longer be required: and it now (1929) consists of three square and two long shawls. The two latter were in origin a personal present sent of his own accord by Maharaja Ranbir Singh to Her Majesty Queen Victoria.

has been this day ratified by the seal of the Right Honourable Sir Henry Hardinge, G.C.B., Governor-General.

Done at Umritsar, the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty-six, corresponding with the seventeenth day of Rubbee-ool-awul 1262 Hijree.

H. HARDINGE

F. CURRIE

H.M. LAWRENCE

By order of the Right Honourable the Governor-General of India.

F. Currie

*Secretary to the Government of India,
with the Governor-General.*

APPENDIX II

Agreement between the Lahore and Kashmir Darbars—1847

Agreement concluded between the Governments of Lahore and Jammu by Dewan Dina Nath and Rai Kishen Chand on the part of Maharaja Duleep Singh and Dewan Jowala Sahai and Kazi Mohkum ud-din on that of Maharaja Gulab Sing in the presence of Lieutenant-Colonel Lawernce, Agent, Governor-General, North-Western Frontier, and Resident at Lahore, and subject to the approval of the Governor-General of India, regarding the exchange of the districts of Hazara, Pukli, Kahuta, etc., west of the River Jhelum for lands east of that river in the direction of Jammu.

We, the undersigned, consent and agree that Captain J. Abbott, the Boundary Commissioner, having examined the revenue records of the country west of the Jhelum, shall, after deducting jagirs and rent-free lands, fix the yearly rent, after which lands producing half that rent shall be made over to Jammu from the Lahore territory. Captain Abbott shall then lay down a well-defined boundary so as to prevent all future dispute, viz., on the west of the Jhelum river to the border of Mozufferabad, whence it is to follow the Kurnaha river until such place as Captain Abbott can determine, a distinct and well-marked line across to the river Indus. This done, the mutual exchange of territory shall be effected, after which it will behove both parties to adhere forever to the terms now settled, but should difference arise, they are to be referred to the Agent, Governor-General, North-Western Frontier.

This agreement is signed in the presence of Lieutenant-Colonel Lawrence, Agent, Governor-General, and is subject to the confirmation of the Governor-General of India. A copy

of this agreement to be made over to each Darbar, and one to be lodged in the Agency Office.

DEWAN JAWALA SAHAI

DEWAN DINA NATH
KAZI MOHKUM-UD-DIN

RAI KISHEN CHAND

H.M. LAWRENCE

*Agent, Governor-General,
and Resident at Lahore.*

Source: A Collection of Treaties, Engagements and Sanads, Vol. XII,
compiled by C.U. Aitchison, 1931, Reprint 1973.

APPENDIX III

Adoption Sunnud to Maharaja Runbeer Singh Bahadoor, Knight of the Most Exalted Order of the Star of India, Cashmere—1862

Her Majesty being desirous that the Governments of the several Princes and Chiefs of India, who now govern their own territories, should be perpetuated, and that the representation and dignity of their Houses should be continued, I hereby, in fulfilment of this desire, repeat to you the assurance which I communicated to you in the Sealkote Durbar, in March 1860, that, on failure of natural heirs, the adoption of an heir into your Highness' House, according to its usage and traditions, will be willingly recognised and confirmed by the British Government.

Be assured that nothing shall disturb the engagement thus made to you, so long as your House is loyal to the Crown and faithful to the conditions of the Treaties, Grants, or Engagements which record its obligations to the British Government.

Dated 5th March 1862.

CANNING

APPENDIX IV

Treaty between the British Government and His Highness Maharaja Runbeer Singh, G.C.S.I. Maharaja of Jummoo and Cashmere, his heirs and successors, executed on the one part by Thomas Douglas Forsyth, C.B. in virtue of the full powers vested in him by His Excellency the Right Hon'ble Richard Southwell Bourke, Earl of Mayo, Viscount Mayo of Monycrower, Baron Naas of Naas, K.P., G.M.S.I., P.C., etc., etc., Viceroy and Governor-General of India, and on the other part by His Highness Maharaja Runbeer Singh aforesaid, in person—
1870

Whereas, in the interest of the high contracting parties and their respective subjects, it is deemed desirable to afford greater facilities than at present exist for the development and security of trade with Eastern Turkestan, the following Articles have, with this object, been agreed upon:

ARTICLE 1

With the consent of the Maharaja, officers of the British Government will be appointed to survey the trade routes through the Maharaja's territories from the British frontier of Lahoul to the territories of the Ruler of Yarkand, including the route via the Chang Chemoo Valley. The Maharaja will depute an officer of his Government to accompany the Surveyors, and will render them all the assistance in his power. A map of the routes surveyed will be made, an attested copy of which will be given to the Maharaja.

ARTICLE 2

Whichever route towards the Chang Chemoo Valley shall, after examination and survey as above, be declared by the British Government to be the best suited for the

development of trade with Eastern Turkestan shall be declared by the Maharaja to be a free highway in perpetuity and at all times for all travellers and traders.

ARTICLE 3

For the supervision and maintenance of the road in its entire length through the Maharaja's territories, the regulation of traffic on the free highway described in Article 2, the enforcement of regulation that may be hereafter agreed upon, and the settlement of disputes between carriers, traders, travellers, or others using that road, in which either of the parties or both of them are subjects of the British Government or of any foreign State, two Commissioners shall be annually appointed, one by the British Government, and the other by the Maharaja. In the discharge of their duties and as regards the period of their residence the Commissioners shall be guided by such rules as are now separately framed and may, from time to time, hereafter be laid down by the joint authority of the British Government and the Maharaja.

ARTICLE 4

The jurisdiction of the Commissioners shall be defined by a line on each side of the road at a maximum width of two Statute koss, except where it may be deemed by the Commissioners necessary to include a wider extent for grazing grounds. Within this maximum width the Surveyors appointed under Article 1 shall demarcate and map the limits of jurisdiction which may be decided on by the Commissioners as most suitable, including grazing grounds; and the jurisdiction of the Commissioners shall not extend beyond the limits so demarcated. The land included within these limits shall remain in the Maharaja's independent possession; and, subject to the stipulations contained in this Treaty, the Maharaja shall continue to possess the same rights of full sovereignty therein as in any other part of his territories, which rights shall not be interfered with in any way by the Joint Commissioners.

ARTICLE 5

The Maharaja agrees to give all possible assistance in enforcing the decisions of the Commissioners and in preventing the breach or evasion of the regulations established under Article 3.

ARTICLE 6

The Maharaja agrees that any person, whether a subject of the British Government, or of the Maharaja, or of the Ruler of Yarkand, or of any foreign State, may settle at any place within the jurisdiction of the two Commissioners, and may provide, keep, maintain and let for hire at different stages the means of carriage and transport for the purposes of trade.

ARTICLE 7

The two Commissioners shall be empowered to establish supply depots and to authorise other persons to establish supply depots at such places on the road as may appear to them suitable; to fix the rates at which provisions shall be sold to traders, carriers, settlers and others; to fix the rent to be charged for the use of any rest houses or serais that may be established on the road. The officers of the British Government in Kullu, etc., and the officers of the Maharaja in Ladak, shall be instructed to use their best endeavours to supply provisions on the indent of the Commissioners at market rates.

ARTICLE 8

The Maharaja agrees to levy no transit duty whatever on the aforesaid free highway; and the Maharaja further agrees to abolish all transit duties levied within his territories on goods transmitted in bond through His Highness' territories from Eastern Turkestan to India, and *vice versa* on which bulk may not be broken within the territories of His Highness. On goods imported into, or exported from,

His Highness territory, whether by the aforesaid free highway or any other route, the Maharaja may levy such import or export duties as he may think fit.

ARTICLE 9

The British Government agree to levy no duty on goods transmitted in bond through British India to Eastern Turkestan or to the territories of His Highness the Maharaja. The British Government further agree to abolish the export duties now levied on shawls and other textile fabrics manufactured in the territories of the Maharaja, and exported to countries beyond the limits of British India.

ARTICLE 10

This Treaty, consisting of 10 articles, has this day been concluded by Thomas Douglas Forsyth, C.B., in virtue of the full powers vested in him by His Excellency the Right Hon'ble Richard Southwell Bourke, Earl of Mayo, Viscount Mayo, Monycrower, Baron Naas of Naas, K.P., G.M.S.I., P.C., etc., etc., Viceroy and Governor-General of India on the part of the British Government, and by Maharaja Runbeer Singh aforesaid; and it is agreed that a copy of this Treaty, duly ratified by His Excellency the Viceroy and Governor-General of India shall be delivered to the Maharaja on or before the 7th September 1870.

Signed, sealed, and exchanged at Sealkote on the second day of April in the year of our Lord one thousand eight hundred and seventy, corresponding with the 22nd day of Bysack, Sembut 1927.

SIGNATURE OF THE MAHARAJA OF CASHMERE

T.D. FORSYTH

MAYO

This treaty was ratified by His Excellency the Viceroy and Governor-General of India at Sealkote on the 2nd day of May 1870:

C.U. AITCHISON

*Officiating Secretary to the Government of India,
Foreign Department.*

APPENDIX V

Rules Regulating the Power of the British Officer at Srinuggur—1872

1.—The British officer for the time being on duty at Srinuggur shall represent the British Government in Cashmere, and for the maintenance of good order the following powers and duties are respectively conferred and imposed upon him:

(a) He may direct any European British subject who is travelling or residing in Cashmere, and who is guilty of any gross misconduct, to leave Cashmere forthwith, and may punish any person knowing, of such direction and disobeying the same with rigorous or simple imprisonment for a term which may extend of six months, or fine which may extend to one thousand rupees, or with both.

(b) He shall receive, try, and determine in his Court (which shall be called "The Court of, the British officer in Cashmere") all suits of a civil nature between European British subjects, and their servants, provided—

- (1) that the right to sue has arisen or the defendant at the time of the commencement of the suit dwells, or carries on business, or personally works for gain, within Cashmere;
- (2) that the suit is not of the same nature as those suits of which the cognisance by the ordinary Civil Court of British India is barred by law.

(c) He shall have the powers of a Magistrate of the first class as described in Section 20 of the Code of Criminal Procedure (Act X of 1872) for the trial of offences committed by European British subjects or by Native British subjects, being servants of European British subjects.

Provided that in the case of any offender being a European British subject, he shall only have power to pass a sentence of imprisonment for a term not exceeding three months, or fine not exceeding one thousand rupees, or both; and when the offence complained of is under the Indian Penal Code punishable with death, or with transportation for life, or when it cannot, in the opinion of such officer, be adequately punished by him, he shall (if he thinks that the accused person ought to be committed) commit him to the Chief Court of the Punjab.

2.—Fines shall be recovered in manner provided by Section 307 of the Code of Criminal Procedure (Act X of 1872).

3.—Sentences of whipping shall be carried into execution in manner provided by Sections 310, 311, 312 and 313 of the same Code.

4.—Persons sentenced to imprisonment shall be transferred to, and confined in, the Sealkote or Rawul Pindee Jail.

5.—The procedure in all civil suits between European British subjects, or European British subjects and their servants, shall be regulated by the Code of Civil Procedure. The procedure in all criminal prosecutions shall be regulated by the Code of Criminal Procedure.

6.—The said officer shall make rules to regulate the service and execution of processes issuing from his Court, and shall fix the fees to be charged to suitors for serving such processes.

7.—All questions of Law, or fact or both, arising in cases before the said officer, shall be dealt with and determined according to the law administered in the Courts of the Punjab.

8.—The said officer shall keep such registers, books and accounts, and submit to the Lieutenant-Governor of the Punjab such statements of the work done in exercise of the aforesaid powers, as may, from time to time, be prescribed by the said Lieutenant-Governor. He shall also comply with such requisitions for records as the said Lieutenant-Governor may, from time to time, make upon him.

9.—Duties and fees of the same amount respectively as the Stamp duties and Court-fees prescribed by Act XVIII of 1869 and Act VII of 1870, shall be enforced by the said officer.

10.—There shall be no appeal against any order, judgement, or decree passed by the said officer in a civil suit. But if, in the trial of any such suit, any question of law or as to construction of a document (which construction may affect the merits of the decision) shall arise, he may draw up a statement of the case, and refer it for the decision of the Chief Court of the Punjab; and he shall, on receipt of a copy of such decision, dispose of the case conformably thereto.

And any person convicted on a trial held by such officer may appeal to the Commissioner of the Rawul Pindee Division; and if such person be a European British subject, he may appeal either to the said Commissioner or to the Chief Court of the Punjab.

11.—The appellant shall in every case give notice of the appeal to the said British officer in Cashmere, who shall, if necessary, instruct the officer empowered to prosecute the case.

The Mixed Court

12.—Civil suits between European British subjects or their servants not being subjects of the Maharaja on the one side, and subjects of His Highness the Maharaja of Cashmere on the other side, shall be decided by a Mixed Court composed of the said British officer and the Civil Judge of Srinuggur, or other officers especially appointed in this behalf by the Maharaja of Cashmere.

13.—When the said British officer and the said Civil Judge or other officer are unable to come to a final decision in any such suit, they shall reduce their difference into writing and refer it to a single arbitrator to be named by them.

14.—The arbitrator so nominated shall proceed to try the case, and his decision shall be final.

15.— And in every case of a reference under these Rules—

(a) the arbitrator shall be at liberty to proceed *ex parte* in case either party, after reasonable notice, neglects or refuses, without good and sufficient cause, to attend on the reference;

(b) the arbitrator shall have power to summon witnesses in cases referred to him;

(c) and the parties respectively shall produce before the arbitrator all books and documents within their possession or control, which the arbitrator may call for as relating to the matters referred;

(d) and the parties and their representatives in interest shall abide by and perform the award.

APPENDIX VI

Agreement Entered into between the British Government and the Cashmere State in regard to the Construction of Telegraph Lines from Jummoo to Srinuggur and from Srinuggur to Gilgit—1878

Whereas His Highness the Maharaja of Cashmere is desirous of obtaining the assistance of the British Government towards the construction of lines of telegraph from Jummoo to Srinuggur and from Srinuggur to Gilgit, the following terms are agreed upon by Major Philip Durham Henderson, C.S.I. Officer on Special Duty in Cashmere, on the part of the British Government, duly empowered by the Viceroy and Governor-General in Council on that behalf, and by Baboo Nilumber Mookerjee, M.A., B.L., Judge of the Sadar Adalut of Cashmere, duly empowered by His Highness the Maharaja on that behalf:

1. The British Government agrees to construct for the Cashmere State two lines of telegraph, each consisting of one wire, to be carried on such suitable supports as are procurable in the vicinity, the one to be erected between Jummoo and Srinuggur at a cost of Rs. 21,600 more or less, and the other between Srinuggur and Gilgit at a cost of Rs. 31,900 more or less, provided in each case the following conditions are observed:

(a) That the transport of all telegraph materials from Sealkote to the Cashmere frontier and within the limits of the Cashmere State shall be directly arranged and paid for by some duly authorised officer of the Cashmere State.

(b) That all labourers , whom the officer in charge of the construction of the line shall require to employ, shall be engaged and paid by a duly authorised officer of the Cashmere State .

(c) That on due notice being given by the officer in charge of the construction of the line, the Cashmere

Government shall, to the utmost of its power, comply with requisitions for transport or labor.

(d) That sound seasoned deodar posts, wherever these are procurable, suitable for telegraph supports, shall be provided by the Cashmere State and distributed along the route to be taken by the telegraph lines, in such manner as the officer in charge of the work may direct.

(e) That no brackets or insulators be used in the construction of the lines, as their cost has not been provided in the estimated amounts stated above.

2. The British Government guarantees that all telegraph material, including the wire supplied by it, shall be of the best quality used for its own lines, and that the lines shall be handed over to the Cashmere Government in full working order.

3. His Highness the Maharaja agrees to pay to the British Government, as the money may be required, the actual cost incurred by it in the construction and establishment of the lines, such cost being inclusive of—

(1) The salaries and allowances of all members of the Indian Telegraph establishment for the whole period they may be detained on duty in Cashmere; and

(2) The cost of insulating the line, or of any other changes in the original scheme that may be made hereafter with the concurrence, or at the request of the Cashmere State.

4. The salaries and allowances of all members of the Indian Telegraph establishment will be paid to them by the Government of India through the officer on special duty, and the amounts of such payments will be recovered subsequently from the Cashmere State.

5. On the application in writing of the Cashmere State, the Telegraph Department will supply at cost price all telegraph instruments and material required from time to time for the maintenance and working of the telegraph lines and offices about to be established.

6. On the application in writing of the Cashmere State, the Telegraph Department will afford such advice and instruction as may be required and desired by the Cashmere

State for the maintenance and working of such telegraph lines and offices.

7. On the application in writing of the Cashmere State the Telegraph Department will lend the services of any Native signallers, who may volunteer for the duty, and whose services can be spared, for such specified periods as may be sufficient to enable the Cashmere State to train its own signallers.

8. The foregoing provisions are accepted by the British Government as a mark of friendship and good will towards His Highness the Maharaja; but it is to be understood that after the lines are delivered over to the Cashmere Government, no responsibility whatever attaches to the British Government, in respect of their subsequent maintenance and working.

P.D. HENDERSON, MAJOR
Officer on special duty in Cashmere

NILUMBER MOOKERJEE
Judge of the Sadr Adalut of Cashmere

The 9th March 1878.

APPENDIX VII

Agreement between the Government of India and His Highness Maharaja Partap Singh, Indar Mahindar Bahadur, Sipar-i-Saltanat, Maharaja of Jammu and Kashmir, relative to the Construction of a Railway to Jammu—1888

1. The line shall be called the "Jammu and Kashmir State Railway."

2. An estimate of the entire cost of constructing the line on the 5 feet 6 inch gauge from Sialkot to the left bank of the Tawi river at Jammu shall be submitted to the Kashmir Darbar for sanction.

3. The whole line shall be constructed by the Darbar through its Chief Engineer, Major-General deBourbei, according to the standard dimensions prescribed by the Government of India, and shall be completed with the utmost possible despatch.

4. All the capital required for the construction of the whole line shall be provided by the Darbar.

The Darbar shall receive from the Government of India interest at the rate of 4 per cent per annum on the capital expenditure on the section of the line which lies within British territory, from the date of payment.

5. All moneys needed for additional works found necessary on the British section of the railway after first construction is completed, will be found by the Government of India, and on similar work on the Kashmir section by the Darbar.

6. The section of the line in Jammu territory shall be leased to, and worked by, the North Western Railway for a period of five years from the date of opening to traffic. During this period the North Western Railway shall maintain the line in an efficient state, and shall pay to the Darbar 1 per cent per annum on the capital expenditure on the Jammu

section. The surplus net earnings on this section, in excess of the said payment of 1 per cent, during the period of five years, shall be divided equally between the North Western Railway and the Kashmir Darbar. In calculating net earnings, the rate of working expenses shall be taken at the average percentage of working expenses to gross earnings on the Punjab section of the North Western Railway, including the Jammu and Kashmir State Railway, for the same period, plus 5 per cent per annum on gross earnings for the use of rolling stock.

7. Subject to the payment of 4 per cent interest provided in Clause 4, the portion of the line in British territory shall remain the absolute property of the Government of India, and the earnings of it shall belong solely to that Government. The Government of India shall have the right at any time, after giving six months notice to repay to the Darbar the capital expenditure advanced by it in respect of this section of the line, and the payment of interest shall thereupon cease.

8. The Government of India and the Darbar shall provide, at their respective charges and free of cost, to the North Western Railway, the land required for railway purposes in their respective territories.

9. After the expiry of the said period of five years, a fresh arrangement shall be made for working the line upon terms to be agreed upon between the Government of India and the Darbar.

10. The fares charged to passengers, the rates for goods, and the rates for railway materials, whether used in construction, maintenance, or working of the line, shall be such as are in general use on the Punjab section of the North Western Railway. The line shall be worked in accordance with the general rules and regulations in force on Indian State Railways.

11. The permanent way, station machinery and other fittings shall be of the types used on Indian State Railways, and shall be obtained at the cost of the Darbar through the Government of India.

12. Half yearly *pro-forma* accounts, showing the entire earnings of traffic and the working expenses, calculated as

explained in Clause 6 of this Argument incurred upon the Jammu and Kashmir State Railway, shall be supplied regularly by the North-Western Railway to the Darbar.

13. His Highness the Maharaja of Jammu and Kashmir, accompanied by his suite and servants with their luggage, shall, when travelling by ordinary train upon this railway, have the privilege of travelling free of any charge between Jammu and Sialkot: suitable vehicles being reserved on each occasion for the exclusive use of the Maharaja and his party.

14. His Highness the Maharaja shall also have the privilege of running free of any charge between Jammu and Sialkot two special return trains every year, consisting each of not more than eighteen railway vehicles of such description as may be required.

15. Each of the ordinary daily trains shall have one carriage attached to it for the exclusive use of the State officials, each of the number of occupants paying a single fare. This carriage shall ordinarily be of the intermediate class, but shall be changed to one of another class upon the requisition of the Darbar.

16. The site of the terminal station at the Jammu end of the line shall be fixed by the Darbar.

17. His Highness the Maharaja of Jammu and Kashmir shall grant to the British Government full jurisdiction within those portions of land situated in His Highness' territories which may be occupied from time to time by the Jammu and Kashmir State Railway or its premises. This cession of jurisdiction is restricted absolutely to railway limits, and to cases occurring within those limits, and does not confer any right of interference in the internal administration of His Highness' territory. Accordingly, the railway police shall forthwith surrender to the Darbar any accused person who, having escaped from the custody of His Highness police, is in their custody, within railway limits.

18. All the plants and trees along and within the whole line lying in the territory of His Highness the Maharaja shall also be considered the property of the Darbar.

Dated at Srinagar this fourth day of July 1888,
corresponding with twenty-third day of Har Samvat 1945.

T. CHICHELE PLOWDEN
Resident in Kashmir

Signed in Vernacular

This agreement was approved and confirmed by His
Excellency the Viceroy and Governor-General in Council.

FOREIGN DEPARTMENT,
SIMLA;
The 14th July 1888.

H.M. DURAND
*Secretary to the Government
of India.*

APPENDIX VIII

Agreement between the British Government and the State Council of Jammu Kashmir for the construction, Maintenance and Working of a Line of Telegraph between Suchetgarh and Jammu along the Jammu and Kashmir State Railway—1890

Whereas the State of Jammu and Kashmir is desirous of having a line of telegraph constructed from Suchetgarh to Jammu Railway Station along the proposed railway from Sialkot to Jammu, the following terms are agreed upon by the Colonel R. Parry Nisbet, C.I.E., Resident in Kashmir, on the part of the Government of India, duly empowered by the Viceroy and Governor-General of India in Council on that behalf, and by Raja Amar Singh, Prime Minister and President of the State Council, duly empowered by the State Council of Jammu and Kashmir on that behalf:

1. The Government of India agrees to construct, for the State of Jammu and Kashmir, a line of telegraph consisting of three wires, to be carried on suitable supports to be erected between Suchetgarh and the Jammu Railway Station at a cost of Rupees eleven thousand six hundred, more or less, and the State of Jammu and Kashmir agrees to pay to the Government of India the cost of the line as the money may be required.

The Government of India agrees to pay the State of Jammu and Kashmir for such portions of the wire on the existing road line between Suchetgarh and Jammu as are found suitable and are used for constructing the new telegraph line between Suchetgarh and the Jammu Railway Station along the proposed railway.

2. The line so constructed shall be called the Suchetgarh-Jammu Railway Telegraph line.

3. With the consent of the Governor-General in Council extra wires may at any time be added by the Telegraph Department on terms and conditions to be agreed upon at

the time between the State of Jammu and Kashmir and the Government of India.

4. The Suchetgarh-Jammu Railway Telegraph line shall be kept in efficient repair by the officers of the Telegraph Department of the Government of India. The State Council of Jammu and Kashmir shall permit the said officers to remove such plants and trees as they consider interfere with or endanger the working of the telegraph line.

5. The instruments, batteries, and materials connected therewith in the Railway Telegraph offices shall be supplied, maintained, and technically supervised by the officers of the Telegraph Department of the Government of India.

6. The State of Jammu and Kashmir shall pay annually to the Government of India, to cover the cost of maintenance and depreciation, Rs. 13-8 per mile of wire which is used by the State of Jammu and Kashmir for purposes not connected with the railway, i.e.; for through traffic between the Telegraph Office of the State of Jammu and Kashmir and the Telegraph offices situated in British territory. All other charges of the Telegraph Department for the wires and Railway Telegraph offices along the railway from Suchetgarh to Jammu, including the Telegraph office in the terminal railway station at Jamímu, shall be paid by the North-Western Railway as a part of the working expenses under Clause 6 of the agreement, dated the 4th July 1888, between the Government of India and His Highness Maharaja Partap Singh, Indar Mahindar Bahadur, Sipar-i-Saltanat, Maharaja of Jammu and Kashmir, relative to the construction of a railway to Jammu.

7. The charges due by the State of Jammu and Kashmir shall be paid half-yearly through the Resident.

8. The State of Jammu and Kashmir agrees to the application, to those of the wires of the Suchetgarh-Jammu Railway Telegraph line which are used for railway purposes and to the Railway Telegraph offices, of the provisions of the British Telegraph Act, XIII of 1885, and such other Acts or legal provisions as have been or may hereafter be passed by the British Government with reference to telegraphs.

9. The State of Jammu and Kashmir agrees to the application, to those of the wires of the Suchetgarh-Jammu

Railway Telegraph line which are used for railway purposes and to the Railway Telegraph offices, of any rules or regulations that are now or may hereafter be made applicable to lines of Telegraph in India.

10. The State of Jammu and Kashmir agrees that the Suchetgarh-Jammu Railway Telegraph line and the Railway Telegraph offices shall be open to the inspection and supervision of the Director-General of Telegraphs and of any officer deputed by him for that purpose.

11. The posts of the telegraph line under reference shall be erected with the limits of the rail-road.

12. This agreement is subject to the condition that notwithstanding anything hereinbefore contained all State messages shall be sent free, and the income from all private messages despatched from any railway station between Suchetgarh and Jammu, where a Telegraph office may be opened, shall be credited to the State of Jammu and Kashmir as at present.

13. This agreement shall be in force for a period of five years from the date of the railway from Suchetgarh to Jammu opening for traffic; but so far as it relates to the State Telegraph line, it shall be optional with the State of Jammu and Kashmir at any time by giving six months previous notice to sever its line from the railway lines and construct its own line independently, connecting it of course with the Government line on the boundary as at present. After the expiry of the said period of five years, a fresh arrangement shall be made for working those of the wires which are used for railway purposes and the Railway Telegraph offices upon terms to be agreed upon between the Government of India and the State of Jammu and Kashmir.

Seal of

R. PARRY NISBET,
Resident in Kashmir.

GULMARG;
The 3rd July 1890

RAJA AMAR SINGH,
Prime Minister and President,
Jammu and Kashmir State Council

Approved and confirmed by His Excellency the Viceroy and Governor-General of India.

W.J. CUNNINGHAM.

SIMLA;

The 23rd July, 1890

*Offg. Secy. to the Govt. of India,
Foreign Department*

APPENDIX IX

Supplementary Agreement between the Government of India and the State Council of Jammu and Kashmir relative to the Funds required for the construction of the British Section of the Jammu and Kashmir State Railway, 1890.

Whereas on the 14th July 1888, an agreement was concluded between the Government of India and His Highness the Maharaja of Jammu and Kashmir according to which it was settled, among other points, that all the capital required for the construction of the whole line of Railway between Sialkot and Jammu should be provided by the Darbar, and that the Darbar should receive from the Government of India interest at the rate of 4 per cent per annum on the capital expenditure on the section of the line which lies within British territory; and whereas the Government of India has since undertaken to pay from Imperial Funds the amount required for the construction of the British section, the Government of India and the Kashmir State Council do hereby make and enter into a supplementary agreement as follows:

The capital required for the construction of the British section of the Jammu and Kashmir State Railway shall be provided by the Government of India, instead of being advanced as a loan by the Kashmir Darbar.

2. So much of Clauses 4 and 7 of the agreement of the 14th July 1888 as relates to the following matters, namely—

- (a) the provision by the Darbar of the capital required for the construction of the section of the Jammu and Kashmir State Railway lying within British territory;
- (b) the payment to the Darbar of interest on the capital which was to have been so provided; and

- (c) the repayment to the Darbar of such Capital, is accordingly hereby cancelled.

Seal of
*Prime Minister and President,
Jammu and Kashmir State Council.*

R. PARRY NISBET, Colonel
Resident in Kashmir.

Dated 1st November 1890.

Approved and confirmed by His Excellency the Viceroy and Governor-General in Council.

W.J. CUNNINGHAM,

*Offg. Secy. to the Govt. of India,
Foreign Department.*

VICEROY'S CAMP, DELHI;
The 18th November 1890.

APPENDIX X

Memorandum of Agreement for the Interchange of Messages between the Imperial Telegraph System of the Government of India and the Telegraph System of the Kashmir State —1897.

(1) Telegrams tendered by the public for despatch at telegraph offices of the Kashmir System will be accepted and despatched under the rules for charges, acceptance and delivery of telegrams in force at the time on the British System, as laid down in the Indian Telegraph Guide whether for delivery by offices of the British or Kashmir State System.

(2) All telegrams Originating in places where there are both British and Kashmir State Telegraph Offices addressed to places at which there is no Kashmir State Telegraph Office, shall be booked by the sender at the British Telegraph Office, and shall not be accepted if tendered at the Kashmir State office.

(3) Messages will be sent as far as practicable towards their destination, over the wires of the system by which booked.

(4) All foreign telegrams transferred by the Kashmir State Telegraph System to the British System shall be fully prepaid in cash at the time of transfer.

(5) His Highness the Maharaja of Kashmir and his brother, Raja Sir Amar Singh, K.C.S.I. and Lieutenant-Colonel Raja Ram Singh, C.B., and they alone, shall have the right of sending messages as at present, free of charge, over the British Telegraph system, both in and out of Kashmir.

(6) The privilege now allowed to certain specified officials of the Kashmir State, vide list attached, to telegraph without charge on the service of the State over the British Telegraph lines within the limits of Kashmir to places where there is no Kashmir State office will be continued. Messages

sent by the State officials other than those above named must be paid for.

(7) Messages on the service of the British Telegraph and Post Departments will be transmitted without charge to or from all Kashmir State Telegraph Offices.

(8) In case of necessity where communication by the wires of one system is interrupted, messages may be diverted to the wires of the other system until communication is restored.

(9) Subject to the foregoing special rules each administration will retain the fees it collects for messages, including deposits for reply and acknowledgements of receipt, and will forward messages booked by the other administration to destination free of all charges.

(10) Fees required for special delivery arrangements cannot be pre-paid. Instructions for such special delivery should be given by the sender in his telegram and the recovery of the charges made from the receiver.

(11) The transfer of messages to and from the Kashmir State lines can be effected subject to rule 3, at any place where there is a British as well as a Kashmir State Telegraph Office. The British Telegraph Department may, at its own expense connect any of its own expense, connect any of its own offices by wire with any Kashmir State Office, and every necessary facility shall be given by the Kashmir State for establishing and maintaining the connection and for the interchange of messages thereby.

(12) In order to secure secrecy messages transferred by hand should be despatched from British offices to Kashmir State offices and *vice versa* in closed covers. They should be accompanied by a separate receipt for each message, duly completed to be signed by the officer in charge of the receiving telegraph office, and returned to transferring office.

(13) In case of deposits for replies or acknowledgement of delivery the sum prepaid must be shown on the message from in the place provided for official instructions.

(14) All complaints regarding telegrams received by one administration from the other for investigation shall be duly enquired into and steps taken to prevent a repetition

of the cause. An official of the Kashmir State shall be appointed to correspond with the Superintendent, Telegraph Check Office, Calcutta, regarding complaints and all matters requiring settlement.

(15) This Agreement will be subject, if necessary, to revision after five years from date of coming in to force.

List of Kashmir State officials who are authorised under paragraph 6 to send telegrams on the service of the State free of charge over the wires which are worked by the British Telegraph Department within the limits of Kashmir.

1. Military Secretary to Kashmir Government.
2. Quartermaster-General, Kashmir Army.
3. Adjutant-General, Kashmir Army.
4. General Officer Commanding.
5. General Officer Commanding, Imperial Service Troops.
6. General Officer Commanding Kashmir.
7. General Officer Commanding Gilgit.
8. Conservator of Forests, Kashmir State.
9. Residency Vakil.
10. Officer in Charge of European Quarters.
11. Superintending Surgeon, Kashmir Hospitals.
12. Superintending Engineer, Kashmir State.
13. Assistant Engineer, Jhelum Valley Road.
14. Assistant Engineer, Kashmir.
15. Divisional Engineer, Jammu.
16. Chief Medical Officer, Kashmir.
17. Superintendent of Police, Jammu.
18. Superintendent of Police, Kashmir.
19. Meteorological Observer, Srinagar.
20. Revenue Member of Council.
21. Governor of Jammu.
22. Governor of Kashmir.
23. Accountant-General, Kashmir State.
24. Settlement Commissioner, Kashmir State.
25. Wazir Wazarat, Leh.
26. Wazir Wazarat, Gilgit.
27. Wazir Wazarat, Kamraj (Sopore).
28. Wazir Wazarat, Muzaffarabad.
29. Wazir Wazarat, Islamabad.
30. Wazir Wazarat, Udhampore.
31. Wazir Wazarat, Jammu.
32. Tehsildar, Skardu.
33. Judicial Member of Council.
34. Chief Judge, Jammu.
35. Chief Judge, Srinagar.

APPENDIX XI

Memorandum of Agreement entered into Between the British Government and His Highness Major-General Sir Pratap Singh, G.C.S.I., Maharaja of the Jammu and Kashmir State, for the Introduction of more Definite Arrangements for the Effective Control and Discipline of the Kashmir Imperial Service Troops when Serving beyond the Frontier of the Jammu and Kashmir State, —1899.

Whereas His Highness Major-General Sir Pratap Singh, G.C.S.I., Maharaja of Jammu and Kashmir State, maintains a force of Imperial Service Troops for the Purpose of co-operating, if need be, in the defence of the British Empire, and

Whereas it is necessary that the Imperial Service Troops of the Jammu and Kashmir State, when associated with troops of the British Army, should be under the orders of the Officer Commanding the combined forces, and subject to the like discipline and control as the officers and soldiers of Her Majesty's Indian Army, and

Whereas it is not the wish or intention of the Government of India that a British officer should be appointed to command any Corps of Imperial Service Troops, though British officers are employed in order to instruct and inspect the said troops,

It is hereby agreed between the Governor-General of India on the one part and His Highness Major-General Sir Pratap Singh, G.C.S.I., Maharaja of Jammu and Kashmir State, on the other, as follows, namely —

1. Whenever the said troops or any portion thereof are moved beyond the frontier of the said State, they shall be attached to the command and under the orders of the Officers Commanding the District, Contingent or Force in which they are employed and such officer shall by virtue of this agreement be authorised to administer in respect of

the said troops, so serving, the military laws and regulations to which they are subject under the laws of the said State, and for that purpose and for the due preservation of discipline among the same to convene all such Courts, and to issue all such orders, and to pass all such judgements and sentences, and generally to exercise all such authority as may be lawfully convened, issued, passed and exercised by the authorities of the Jammu and Kashmir state, when the said troops are serving within the territorial limits of the said state: Provided always that the execution of every sentence so passed in British territory shall be carried out under the orders of His Highness the Maharaja or of some person to whom the requisite authority has been delegated by him.

2. In order further to ensure the efficiency of the said Imperial Service Troops and the maintenance of discipline among them when serving along with Her Majesty's forces, the said Major-General Sir Pratap Singh, G.C.S.I., the Maharaja of Jammu and Kashmir State, has embodied in the disciplinary law of his State, applicable to the said Imperial Service Troops when employed on active service either within or without British India, the provisions, *mutatis mutandis*, of the Indian Articles of war for the time being in force. The due application and enforcement of the said provisions in respect of the Imperial Service Troops aforesaid shall be carried out under the authority of the Officer Commanding the District, Contingent or force aforesaid.

PRATAP SINGH,

Maharaja of Jammu and Kashmir.

Dated the 12th September 1899.

A.C. TALBOT,
Resident in Kashmir

Approved and confirmed by the Government of India.

By Order,
H.S. BARNES,

*Secretary to the Government of India
Foreign Department.*

SIMLA:

The 7th May 1901.

APPENDIX XII

Memorandum of Agreement between the Government of India and His Highness Maharaja Partab Singh, Indar Mahindar Bahadur, Sipar-i-Saltanat, Maharaja of Jammu and Kashmir, relative to the Construction and Working of the Jammu and Kashmir State Railway, — 1913.

In supersession of all previous agreements, the following terms and conditions are agreed upon between the Government of India and His Highness the Maharaja of Jammu and Kashmir as a complete agreement for the construction and working of the Jammu and Kashmir State Railway:

1. The line shall be called the "Jammu and Kashmir State Railway" and is to be on the 5 feet 6 inches gauge.
2. All the capital required for the construction of the line in Kashmir State territory shall be provided by the Darbar and that required for the construction of the British section shall be provided by the Government of India.
3. All moneys needed for additional works found necessary on the British section of the railway after first construction is completed, will be found by the Government of India, and on similar works on the Kashmir section by the Darbar. All works will be executed by the North Western Railway.
4. The Government of India and the Darbar shall provide, at their respective charges, and free of cost to the North Western Railway, the land required for railway purposes in their respective territories.
5. The permanent-way, station machinery and other fittings shall be of the types used on Indian State Railways and when chargeable to the Darbar shall be obtained at the cost of the Darbar through the Government of India.
6. The railway referred to in the clauses following as the said railway is the section of the Jammu and Kashmir

State Railway which lies in Kashmir territory, and extends from mile 35.2 from Wazirabad near Suchetgraph* to the left bank of the Tawi river at Jammu.

7. The said railway shall be worked and maintained in an efficient State by the North Western Railway.

8. The North Western Railway shall receive from the Kashmir Darbar, for the working and maintenance of the said railway, a sum equal to 55.5 per cent of the gross earnings of the said railway. This charge will cover the hire of locomotives and rolling-stock necessary to work the traffic of the said railway. It will also cover the cost of such new minor works as are usually charged to Revenue on the North Western Railway, but this only up to a limit of Rs. 30 per mile per annum. The remaining 44.5 per cent will be credited to the Darbar.

9. Besides the 44.5 per cent of gross earnings to be credited to the Kashmir Darbar under paragraph 8 above, a rebate payment on interchanged traffic will be made by the North Western Railway to the extent necessary, together with the Kashmir Darbar's share of the net earnings of the Tawi-Suchetgarh section to give the Darbar a total dividend of $3\frac{1}{2}$ per cent per annum on the actual expenditure to the end of the half year concerned as entered in rupees in the Capital account of the said railway : Provided always that the payment so made by the North Western Railway to the Darbar shall in no case exceed the net earnings of the North Western Railway from traffic interchanged with the section.

10. The term "gross earnings" in clause 8 means and includes all receipts from the local bookings of coaching and goods traffic, a mileage proportion of traffic interchanged, all sums received as rents, and all other receipts, except freight on revenue stores, usually treated as railway revenue. Gross earnings shall include telegraph earnings from private messages despatched from stations on the railway, Kashmir State telegrams being carried free as at present.

11. All moneys required for additional works on the said railway usually charged to Capital shall be found by the Kashmir Darbar but no charge shall be made by the North Western Railway for supervision of the construction of such Capital works except where special establishment

is employed, in which case the charge shall be limited to the actual cost of the extra establishment so employed.

11 (a) No capital works of the nature described above shall be commenced without the previous consent of the Darbar.

12. The rates and fares charged on the said railway shall be such as are from time to time in force on the main line section of the North Western Railway.

13. The said railway shall be worked in accordance with the General Rules for Indian State Railways and with the subsidiary Rules in force from time to time on the North Western Railway.

14. Half-yearly accounts, for financial year*, showing the entire earnings and the working expenses (calculated as explained in clauses 8 and 9 of this memorandum) of the said railway shall be supplied regularly by the North Western Railway to the Darbar.

15. His Highness the Maharaja of Jammu and Kashmir, accompanied by his suite and servants with their luggage, shall, when travelling by ordinary train upon this railway, have the privilege of travelling free of any charge between Jammu and Sialkot; suitable vehicles being reserved on each occasion for the exclusive use of the Maharaja and his party.

16. His Highness the Maharaja shall also have the privilege of running free of any charge between Jammu and Sialkot two special return trains every year, consisting each of not more than 18 railway vehicles of such description as may be required.

17. Each of the ordinary daily trains on the said railway shall have one carriage labelled "For Kashmir Officials only" attached to it for the exclusive use of the State Officials, each of the occupants paying a single fare. This carriage shall ordinarily be of the intermediate class, but shall be changed to one of another class upon the requisition of the Darbar.

18. His Highness the Maharaja of Jammu and Kashmir shall grant to the British Government full jurisdiction within those portions of land situated in His Highness' territories which may be occupied from time to

time by the Jammu and Kashmir State Railway or its premises. This cession of jurisdiction is restricted absolutely to railway limits, and to cases occurring within those limits, and does not confer any right of interference in the internal administration of His Highness' territory. Accordingly the Railway police shall forthwith surrender to the Darbar any accused person who, having escaped from the custody of His Highness' police, is in their custody within railway limits.

19. All the plants and trees along and within the whole line lying in the territory of His Highness the Maharaja shall be considered the property of the Darbar.

20. This Agreement shall have effect from the 1st June, 1912 and shall remain in force until the expiration of six months after either party to it has notified its desire to terminate it and received an acknowledgement of the receipt of the same, always provided that no such notice of termination shall be permissible by either party prior to the 1st of April 1917.*

AMAR NATH, DEWAN, C.I.E.
Chief Minister,
Jammu and Kashmir State,

Dated 19th April 1913.

W.D. WAGHORN, MAJOR, R.E.,
Offg. Agent, N.W. Railway.

Dated 13th April 1913.

S.M. Fraser,
Resident in Kashmir

Dated 21st April 1913.

* Corrigendum to the agreement dated 19th April, 1913 between the Government of India and His Highness Maharaja Partap Singh, Indar Mahindar Bahadur, Sipar-i-Saltanat, Maharaja of Jammu and Kashmir, relative to the construction and working of the Jammu and Kashmir State Railway — 1913.

It is mutually agreed by the parties that the following modifications be made in the above Agreement dated the 19th April 1913:—

- (1) Substitute "35.62 from Wazirabad near Suchetgarh" for "920½ near Suchetgarh" occurring in the third line of paragraph 6.
- (2) Insert the words "for financial year" after "accounts" occurring in the first line of paragraph 14.
- (3) Substitute the words "1st of April 1917" for the words "1st of January 1917" occurring in the last line of paragraph 20.

AMAR NATH,
Chief Minister,
Jammu and Kashmir State

Dated 14th September 1915.

C.H. Cowie, Col.,
Agent, N.W. Railway.

- *Dated 13th April 1913.*

S.M. Fraser,
Resident in Kashmir

Dated 14th September 1915.

APPENDIX XIII

Revised Memorandum of Agreement for the Interchange of Messages between Imperial Telegraph System of the Government of India and the Telegraph System of the Kashmir State, 1920.

1. Except as may be specially provided in the articles of this Agreement, telegrams tendered by the public at the telegraph offices of the Kashmir State system will be accepted and despatched under the rules for charges and acceptance of telegrams in force at the time on the Indian telegraph systems, as laid down in the Indian Telegraph Guide, whether they are for delivery by offices of the Indian system or the Kashmir State system. Similarly, telegrams received by wire by telegraph offices of the Kashmir State system will be delivered by those offices under the rules for delivery of telegrams laid down in the Indian Telegraph Guide irrespective of whether the telegrams originated at a telegraph office of the Indian system or of the Kashmir State system.

2. Telegrams classed as "Ordinary" will not be dealt with by the Kashmir State telegraph offices on the birthday of His Highness the Maharaja of Kashmir.

3. All telegrams tendered for despatch in places where there are both Indian and Kashmir State telegraph offices and addressed to places at which there is no Kashmir State telegraph office shall be booked by the sender at the Indian telegraph office and shall not be accepted if tendered at the Kashmir State telegraph office. Similarly, all telegrams tendered at such places addressed to places where there is a Kashmir State telegraph office but no Indian telegraph office shall be booked by the sender at the Kashmir State telegraph office, and shall not be accepted if tendered at the Imperial telegraph office.

4. Messages will be sent as far as practicable towards their destination over the wires of the system by which they were booked.

5. All foreign telegrams, i.e., those addressed to places outside the limits of India and Burma, booked at the offices of the Kashmir State system must be made over with the full charge in prepayment at the time of their transfer to the Indian system for onward transmission.

6. His Highness the Maharaja Sahib of Kashmir (and his nephew Honorary Captain Raja Sir Hari Singh, K.C.I.E., and they alone)* shall have the right of sending messages, State or private, free of charge over the Indian telegraph system from any telegraph office to any other, both in and out of Jammu and Kashmir State territories. This power cannot be delegated.

7. Certain officials of the Kashmir State have the privilege of telegraphing free of charge on the service of the Kashmir State from Kohala or from any Indian telegraph office within the limits of the Kashmir and Jammu State to any Indian telegraph office within the same limits and *vice versa*; or from Kohala or any Indian telegraph office within the said limits to any Kashmir State telegraph office and *vice versa*; provided that if a telegram is to be sent to a Kashmir State telegraph office from a place where both an Indian and a State telegraph office exist, the message should not be booked at the Indian telegraph office unless communication by the wires of the Kashmir State telegraph system is interrupted.

8. Messages relating to telegraph traffic issued by telegram from offices of the Indian Post and Telegraph Department and the licensed systems will be transmitted without charge to or from all Kashmir State telegraph offices. Similarly, such messages relating to telegraph traffic issued by telegram from offices of the Kashmir State telegraphs will be transmitted free to and from any telegraph office of the Indian Telegraph Department or the licensed systems.

* Now excluded owing to the accession of Sir Hari Singh to the *gaddi*.

9. In case of necessity when communication by the wires of one system is interrupted, messages may be diverted without any charge to the wires of the other system until communication is restored.

10. Subject to the foregoing special rules, each administration will retain the fees it collects for messages, including deposits for reply and acknowledgement of receipt, and will forward messages booked by the other administration to destinations free of all charges.

11. Fees required for special delivery arrangements cannot be prepaid by the senders of telegrams. Instructions for such special delivery should be given by the sender in his telegram and the recovery of the charges will be made from the addressee.

12. Prepaid reply telegram forms issued by any Government or licensed telegraph office of the Indian system shall be accepted by the Kashmir State telegraph office when presented in payment of any telegram tendered at such an office, and conversely, such forms issued by a Kashmir State telegraph office shall be accepted at any Government or licensed telegraph office of the Indian system and no claim shall be made by either administration in respect of fees collected on such forms by the other administration.

13. The transfer of messages to and from the Kashmir State telegraph system can be effected, subject to rule 4, at any place where there is an Indian as well as a Kashmir State telegraph office, and for this purpose the Indian Post and Telegraph Department may, at its own expense, connect any of its offices by wire with any Kashmir State office, and every necessary facility shall be given by the Kashmir State for establishing and maintaining the connection and for interchange of messages thereby.

14. In order to secure secrecy, messages transferred by hand should be despatched from Indian offices to Kashmir State offices and *vice versa* in closed covers. They should be accompanied by a separate receipt for each message, duly completed, to be signed by the officer in charge of the receiving telegraph office, and returned to the transferring office.

15. In the case of deposits for replies or acknowledgement of delivery, the sum prepaid must be shown on the message form in the place provided for official instructions.

16. All complaints regarding telegrams received by one administration from the other for investigation shall be duly enquired into and steps taken to prevent a repetition of the cause. An official of the Kashmir State shall be appointed to correspond with the Director General of the Posts and Telegraph, Complaint and Fault Section, Calcutta, regarding complaints and all matters requiring settlement.

17. This Agreement will be subject, if necessary, to revision after five years from the date of its coming into force.

18. Any of the articles of this agreement may be added to or modified or cancelled by mutual consent at any time without affecting the validity of the remaining articles or the period of termination of the Agreement.

APPENDIX XIV

Sanad Granted by His Highness the Maharaja of Jammu and Kashmir to Raja Zafr Khan of Nagar.

Whereas the State of Nagar has recently been in armed rebellion against my authority, and whereas in consequence thereof, you, Raja Jafr Khan have justly forfeited any rights which you may have possessed as ruler of the said State;

And whereas by reason of your submission; and in consideration of your promise to abide by the following conditions, it is thought desirable, as an act of clemency, to re-appoint you as the ruler of the said State;

Now, therefore, I have resolved, with the approval and authority of the Governor-General of India in Council, to re-appoint you, Raja Jafr Khan, as ruler of the said State of Nagar, and you are hereby appointed to be Raja of Nagar.

The Chiefship of the Nagar State will be hereditary in your family and will descend in the direct line primogeniture, provided that in each case the succession is approved by the Maharaja of Jammu and Kashmir for the time being and by the Government of India.

An annual tribute of the following amounts, that is to say:

Twenty-six tilloos of gold, equal to 17 tolas and 1 masha, will be paid by you and your successors to the State of Jammu and Kashmir.

Further, you are informed that the permanence of the grant conveyed by this sanad will depend upon the ready fulfilment by you and your successors of all orders given by the Jammu and Kashmir State, with regard to the conduct of relations between the State of Nagar and States and tribes adjoining it, the administration of your territory, the construction of roads through your country, and composition of such troops as you may be permitted to retain, and any other matters in which the Maharaja of Jammu and Kashmir for the time being may be pleased to intervene. Be assured

that, so long as your house is loyal to the State of Jammu and Kashmir and to the British Government, and faithful to the conditions of this sanad, you and your successors will enjoy favour and protection.

APPENDIX XV

Sanad Granted by His Highness the Maharaja of Jammu and Kashmir to Raja Muhammad Nazim Khan of Hunza.

Whereas the State of Hunza has recently been in armed rebellion against my authority, and whereas in consequence thereof, you, Raja Safdar Ali Khan has justly forfeited any rights which he may have possessed as ruler of the said State;

And whereas the said Safdar Ali Khan has fled from Hunza, and has not returned or made submission to me or to the Government of India, and whereas I nevertheless desire to continue the Chiefship of the said State of Hunza in the person of a member of the ruling family of the said State;

Now, therefore, I have with the approval and authority of the Governor-General of India in Council, selected you, Muhammad Nazim Khan, to be ruler of the said State of Hunza.

The Chiefship of the Hunza State will be hereditary in your family and will descend in the direct line primogeniture, provided that in each case the succession is approved by the Maharaja of Jammu and Kashmir for the time being and by the Government of India.

An annual tribute of the following amounts, that is to say, twenty-five tilloos of gold, equal to 16 tolas and 5 masha, will be paid by you and your successors to the State of Jammu and Kashmir.

Further, you are informed that the permanence of the grant conveyed by this sanad will depend upon the ready fulfilment by you and your successors of all orders given by the Jammu and Kashmir State, with regard to the conduct of relations between the State of Hunza and the States and tribes adjoining it, the administration of your territory, the prevention of raiding and man-stealing, the construction of

roads through your country, and composition of such troops as you may be permitted to retain, and any other matters in which the Jammu and Kashmir State may be pleased to intervene. Be assured that, so long as your house is loyal to the State of Jammu and Kashmir, and to the British Government, and faithful to the conditions of this sanad, you and your successors will enjoy favour and protection.

*English copy of the sanad granted to the people of
Gor on 2nd November 1892.*

The people in the tributary State of Gor are hereby promised in the name of the Government of His Highness the Maharaja of Jammu and Kashmir that, in consideration of their opening their country to the officials and troops of His Highness the Maharaja and giving assistance to British officers travelling in Gor, they shall never be called upon to pay any revenue or "Kharid" grain, nor any tribute other than that at present imposed upon them.

It is hereby promised that no "kar beggar" will ever be taken from the Gor people, and the two villages of Geys will also be granted to them on the same terms as they have been allowed in the case of Gor.

This promise to which the signatures of the Governor of Gilgit and of the British Agent are appended, will hold good so long as the people of Gor are faithful to their engagements, and carry out the orders of the Government.

APPENDIX XVI

Form of Sanad for Thor

Whereas the inhabitants of the Thor valley have from times past always been intimately connected with the Shinaki communities of Chilas; and whereas they have unitedly submitted a petition to be taken under the protection of Government in the same manner as the other sections Chilas, the Government of India has been pleased to accept their prayer.

It is accordingly notified in the name of His Highness the Maharaja of Jammu and Kashmir and the Government of India that for the future the State of Thor will be considered to be one of the Tributary States of the Chilas district, and will receive exactly the same treatment from the Political Officer in Chilas as the other States under his political charge.

The people of Thor will be responsible for their internal government, but will refer all cases which they cannot themselves settle in accordance with tribal custom, and all questions of a political nature between themselves and other communities to the Political Officer in Chilas for settlement; and they will abide by his decisions.

In consideration of their faithfully performing the levy service required of them, and in consideration of their opening their country at all times to the officials and troops of His Highness the Maharaja and of always giving assistance to British officers travelling in Thor, and always obeying all orders sent to them from Gilgit, the people of the Tributary State of Thor will be allowed to keep their arms for their own defence; and will not be called upon for any tax beyond the tribute of 12 male goats, which is hereby fixed as a yearly nazarana to His Highness the Maharaja of Jammu and Kashmir; and will not be called upon to do any work or forced labour outside the limits of their valley. In case, however, of the Thor people giving Government cause

for displeasure, or in case of their showing any want of loyalty and refusing to carry out orders, it will rest with Government to impose any further tax or service which it may consider necessary.

The paper signed by

Political Agent,
Gilgit, on behalf of the Government of India, and by

Wazir-i-Wazarat,

Frontier Districts, Gilgit, on behalf of His Highness the Maharaja of Jammu and Kashmir on the day of is given to the people of Thor as a sanad.

Source: A Collection of Treaties, Engagements and Sanads, Vol. XII,
compiled by C.U. Aitchison, 1931, Reprint 1973.

APPENDIX XVII

Instrument of Accession of Jammu and Kashmir State

Whereas, the Indian Independence Act, 1947 provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as India, and that the Government of India Act, 1935, shall with such omissions, additions, adaptations and modifications as the Governor-General may by order specify, be applicable to the Dominion of India;

And whereas the Government of India Act, 1935, as so adapted by the Governor-General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof;

Now, therefore, I Shriman Indar Mahandar Rajrajeshwar Maharajadhiraj Shri Hari Singhji, Jammu and Kashmir Naresh Tatha Tibbet adi Deshadhipati, Ruler of Jammu and Kashmir State in the exercise of my sovereignty in and over my said State do hereby execute this my Instrument of Accession and —

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes of the Dominion, exercise in relation to the State of Jammu and Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935 as in force in the Dominion of India on the 15th day of August 1947 (which Act as so in force is hereinafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by the virtue of this my Instrument of Accession.

3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an Agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such Agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion Law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into agreements with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument

to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of October Nineteen Hundred and Forty-seven.

(Sd.) HARI SINGH
Maharajadhiraj of Jammu and Kashmir State.

I do hereby accept this Instrument of Accession.

Dated this twenty-seventh day of October Nineteen Hundred and Forty-Seven.

(Sd.) MOUNTBATTEN OF BURMA
(Governor-General of India)

Source : Justice Dr. A.S. Anand; Development of the Constitution of J&K.

APPENDIX XVIII

Resolution Adopted at the Two Hundred and Twenty-ninth Meeting of the Security Council, 17th January, 1948 (S/651):

THE SECURITY COUNCIL having heard the statements on the situation in Kashmir from representatives of the Governments of India and Pakistan;

RECOGNISING the urgency of the situation; taking note of the telegram addressed on 6th January by its President to each of the parties and of their replies thereto; and in which they affirmed their intention to conform to the Charter;

CALLS UPON both the Government of India and the Government of Pakistan to take immediately all measures within their power (including public appeal to their people) calculated to improve the situation and to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate the situation;

AND FURTHER REQUESTS each of those Governments to inform the Council immediately of any material change in the situation which occurs or appears to either of them to be about to occur while the matter is under consideration by the Council, and consult with the Council thereon.

Source: Government of India, Ministry of External Affairs: Kashmir and the United Nations, 1964.

APPENDIX XIX

U.N.C.I.P. Resolution of August 13, 1948 (S/1100, Para 75)

The United Nations Commission for India and Pakistan having given careful consideration to the points of view expressed by the Representatives of India and Pakistan regarding the situation in the State of Jammu and Kashmir, and being of the opinion that the prompt cessation of hostilities and the correction of conditions the continuance of which is likely to endanger international peace and security are essential to implementation of its endeavours to assist the Government of India and Pakistan in effecting a final settlement of the situation,

Resolves to submit simultaneously to the Governments of India and Pakistan the following proposal:

PART I

Cease-Fire Order

A. The Governments of India and Pakistan agree that their respective High Commands will issue separately and simultaneously a cease-fire order to apply to all forces under their control in the State of Jammu and Kashmir as of the earliest practicable date or dates to be mutually agreed upon within four days after these proposals have been accepted by both the Governments.

B. The High Commands of the Indian and Pakistani forces agree to refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu and Kashmir.

(For the purpose of these proposals "forces under their control" shall be considered to include all forces, organised and unorganised, fighting or participating in hostilities on their respective sides).

C. The Commanders-in-Chief of the forces of India and Pakistan shall promptly confer regarding any necessary local changes in present dispositions which may facilitate the cease-fire.

D. In its discretion and as the Commission may find practicable, the Commission will appoint military observers who, under the authority of the Commission and with the co-operation of both Commands, will supervise the observance of the cease-fire order.

E. The Government of India and the Government of Pakistan agree to appeal to their respective peoples to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations.

PART II

Truce Agreement

Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities as outlined in Part I, both Governments accept the following principles as a basis for the formulation of a truce agreement, the details of which shall be worked out in discussion between their Representatives and the Commission.

A

1. As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from that State.

2. The Government of Pakistan will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting.

3. Pending a final solution, the territory evacuated by the Pakistani troops will be administered by the local authorities under the surveillance of the Commission.

B

1. When the Commission shall have notified the Government of India that the tribesmen and the Pakistani nationals referred to in Part IIA-2 hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the State of Jammu and Kashmir, and further, that the Pakistani forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of its forces from the State in stages to be agreed upon with the Commission.

2. Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian Government will maintain within the lines existing at the moment of cease-fire the minimum strength of its forces which in agreement with the Commission are considered necessary to assist local authorities in the observance of law and order. The Commission will have observers situated where it deems necessary.

3. The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all measures within its power to make it publicly known that peace, law and order will be safeguarded and that all human and political rights will be guaranteed.

C

1. Upon signature, the full text of the truce agreement or a communique containing the principles thereof as agreed upon between the two Governments and the Commission will be made public.

PART III

The Government of India and the Government of Pakistan re-affirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the truce agreement, both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured.

APPENDIX XX

U.N.C.I.P. Resolution of January 5, 1949 (S/1430, para 143)

The United Nations Commission for India and Pakistan, having received from the Governments of India and Pakistan, in communications dated December 23, and December 25, 1948, respectively, their acceptance of the following principles which are supplementary to the Commission's resolution of August 13, 1948:

1. The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite.

2. A plebiscite will be held when it shall be found by the Commission that the cease-fire and truce arrangements set forth in Parts I and II of the Commission's resolution of August 13, 1948, have been carried out and arrangements for the plebiscite have been completed.

3(a). The Secretary-General of the United Nations will, in agreement with the Commission, nominate a Plebiscite Administrator who shall be a personality of high international standing and commanding general confidence. He will be formally appointed to office by the Government of Jammu and Kashmir.

(b) The Plebiscite Administrator shall derive from the State of Jammu and Kashmir the powers he considers necessary for organising and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite.

(c) The Plebiscite Administrator shall have authority to appoint such staff and observers as he may require.

4. (a) After implementation of Parts I and II of the Commission's resolution of August 13, 1948, and when the Commission is satisfied that peaceful conditions have been restored in the State, the Commission and the Plebiscite Administrator will determine, in consultation with the Government of India, the final disposal of Indian and State

armed forces, such disposal to be with due regard to the security of the State and the freedom of the plebiscite;

(b) As regards the territory referred to in A-2 of Part II of the resolution of August 13, 1948, final disposal of the armed forces in that territory will be determined by the Commission and the Plebiscite Administrator in consultation with the local authorities.

5. All civil and military authorities within the State and the principal political elements of the State will be required to co-operate with the Plebiscite Administrator in the preparation for and the holding of the plebiscite.

6(a). All citizens of the State who have left it on account of the disturbances will be invited and be free to return and to exercise all their rights as such citizens. For the purpose of facilitating repatriation there shall be appointed two Commissions, one composed of nominees of India and the other of nominees of Pakistan. The Commissions shall operate under the direction of the Plebiscite Administrator. The Governments of India and Pakistan and all authorities within the State of Jammu and Kashmir will collaborate with the Plebiscite Administrator in putting this provision into effect.

(b) All persons (other than citizens of the State) who on or since August 15, 1947, have entered it for other than lawful purpose, shall be required to leave the State.

7. All authorities within the State of Jammu and Kashmir will undertake to ensure, in collaboration with the Plebiscite Administrator, that:

(a) There is no threat, coercion or intimidation, bribery or other undue influence on the voters in the plebiscite.

(b) No restrictions are placed on legitimate political activity throughout the State. All subjects of the State, regardless of creed, caste or party, shall be safe and free in expressing their views and in voting on the question of the accession of the State to India or Pakistan. There shall be freedom of the press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit;

(c) All political prisoners are released;

(d) Minorities in all parts of the State are accorded adequate protection; and

(e) There is no victimisation.

8. The Plebiscite Administrator may refer to the United Nations Commission for India and Pakistan problems on which he may require assistance, and the Commission may in its discretion call upon the Plebiscite Administrator to carry out on its behalf any one of the responsibilities with which it has been entrusted.

9. At the conclusion of the plebiscite, the Plebiscite Administrator shall report the result thereof to the Commission and to the Government of Jammu and Kashmir. The Commission shall then certify to the Security Council whether the plebiscite has or has not been free and impartial.

10. Upon the signature of the truce agreement the details of the foregoing proposals will be elaborated in the consultations envisaged in Part III of the Commission's resolution of August 13, 1948. The Plebiscite Administrator will be fully associated in these consultations.

Source : Government of India, Ministry of External Affairs: Kashmir and the United Nations, 1964.

APPENDIX XXI

Extracts from the Inaugural Address of Sheikh Mohammed Abdullah to the Jammu and Kashmir Constituent Assembly on 5 November 1951.

You are no doubt aware of the scope of our present constitutional ties with India. *We are proud to have our bonds with India, the goodwill of whose people and Government is available to us in unstinted and abundant measure.* The Constitution of India has provided for a federal union, and in the distribution of sovereign powers has treated us differently from other constituent units. With the exception of the items grouped under Defence, External Affairs, and Communications in the Instrument of Accession, we have complete freedom to frame our Constitution in the manner we like, in order to live and prosper as good partners in a common endeavour for the advancement of our peoples. I would advise that, while safeguarding our autonomy to the fullest extent so as to enable us to have the liberty to build our country according to the best traditions and genius of our people, we may also, by suitable constitutional arrangements with the Union, establish our right to seek and compel Federal co-operation and assistance in this great task, as well as offer our fullest co-operation to the union.

Finally, we come to the issue which has made Kashmir an object of world interest, and has brought her before the forum of the United Nations. This simple issue has become so involved that people have begun to ask themselves, after three and a half years of tense expectancy, "Is there any solution?" Our answer is in the affirmative. Everything hinges around the genuineness of the will to find a solution; if we face the issue straight, the solution is simple.

The problem may be posed in this way. Firstly, was Pakistan's action in invading Kashmir in 1947 morally and legally correct, judged by any norm of international behaviour? *Sir Owen Dixon's verdict on this issue is perfectly plain. In unambiguous terms he declared Pakistan an*

aggressor. Secondly, was the Maharaja's accession to India legally valid or not? The legality of the accession has not been seriously questioned by any responsible or independent person or authority.

These two answers are obviously correct. Then where is the justification of treating India and Pakistan at par in matters pertaining to Kashmir? *In fact, the force of logic dictates the conclusion that the aggressor should withdraw his armed forces, and the United Nations should see that Pakistan gets out of the State.*

In that event, India herself, anxious to give the people of the State a chance to express their will freely, would willingly co-operate with any sound plan of demilitarisation. They would withdraw their forces, only garrisoning enough posts to ensure against any repetition of that earlier treacherous attack from Pakistan.

When the raiders were fast approaching Srinagar, we could think of only one way to save the State from total annihilation—by asking for help from a friendly neighbour. The representatives of the National Conference, therefore, flew to Delhi to seek help from the Government of India. But the absence of any constitutional ties between our State and India made it impossible for her to render us any effective assistance in meeting the aggressor. As I said earlier, India had refused to sign a Standstill Agreement with the State on the ground that she could not accept such an agreement until it had the approval of the people. But now, since the people's representatives themselves sought an alliance, the Government of India showed readiness to accept it. Legally the Instrument of Accession had to be signed by the Ruler of the State. This the Maharaja did. While accepting that accession, the Government of India said that she wished that 'as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the State's accession should be settled by reference to the people.'

As a result I am conscious that nothing is all black or all white, and there are many faces to each of the propositions before us. I shall first speak on the merits and the demerits of the State's accession to India. In the final analysis, as I understand it, it is the kinship of ideals which determines

the strength of ties between two States. The Indian National Congress has consistently supported the cause of the State's people's freedom. The autocratic rule of the Prince has been done away with and representative governments have been entrusted with the administration. Steps towards democratisation have been taken and these have raised the people's standard of living, brought about much needed social reconstruction, and, above all, built up their very independence of spirit. Naturally, if we accede to India, there is no danger of a revival of feudalism and autocracy. Moreover, during the last four years, the Government of India has never tried to interfere in our internal autonomy. This experience has strengthened our confidence in them as a democratic State.

The real character of a State is revealed in its Constitution. The Indian Constitution has set before the country the goal of secular democracy based upon justice, freedom and equality for all, without distinction. This is the bed-rock of modern democracy. This should meet the argument that the Muslims of Kashmir cannot have security in India, where the large majority of population are Hindus. Any unnatural cleavage between religious groups is the legacy of Imperialism, and no modern State can afford to encourage artificial divisions if it is to achieve progress and prosperity. The Indian Constitution has amply and finally repudiated the concept of a religious State, which is a throwback to medievalism, by guaranteeing the equality of rights of all citizens irrespective of their religion, colour, caste and class.

The national movement in our State naturally gravitates towards these principles of secular democracy. The people here will never accept a principle which seeks to favour the interests of one religion or social group against another. This affinity in political principles, as well as in the past association, and our common path of suffering in the cause of freedom, must be weighed properly while deciding the future of the State.

We are also intimately concerned with the economic well being of the people of this State. As I said before while referring to constitution-building, political ideas are often

meaningless unless linked with economic plans. As a State, we are concerned mainly with agriculture and trade. As you know, and as I have detailed before, we have been able to put through our 'land to the tiller' legislation and make of it a practical success. Land, and all it means, is an inestimable blessing to our peasants who have dragged along in servitude to the landlord and his allies for centuries without number. We have been able under present conditions to carry these reforms through; are we sure that in alliance with landlord-ridden Pakistan, with so many feudal privileges intact, that these economic reforms of ours will be tolerated? We have already heard that news of our Land Reforms has travelled to the peasants of the enemy-occupied area of our State, who vainly desire a like status and like benefits. In the second place, our economic welfare is bound up with our arts and crafts. The traditional market for these precious goods, for which we are justly known all over the world, have been centred in India. The volume of our trade, in spite of the dislocation of the last few years, shows this. Industry is also highly important to us. Potentially we are rich in minerals, and in the raw materials of industry, we need help to develop our resources. India, being more highly industrialised than Pakistan, can give equipment, technical services and materials. She can help us too in marketing. Many goods also which it would not be practical for us to produce here—for instance, sugar, cotton cloth, and other essential commodities—can be got by us in large quantities from India. It is around the efficient supply of such basic necessities that the standard of living of the man-in-the-street depends.

.....It may be pointed out that accession to India will open up possibilities of utilising our forest wealth for industrial purposes and that, instead of lumber, finished goods, which will provide work for our carpenters and labourers, can be exported to India where there is a ready market for them. Indeed in the presence of our fleets of timber-carrying trucks, river transport is a crude system which inflicts a loss of some 20 to 35 per cent in transit.

Still another factor has to be taken into consideration. Certain tendencies have been asserting themselves in India

which may in the future convert it into a religious State wherein the interests of Muslims will be jeopardised. This would happen if a communal organisation had a dominant hand in the Government, and the Congress ideals of equality of all communities were made to give way to religious intolerance. The continued accession of Kashmir to India should, however, help in defeating this tendency. From my experience of the last four years, it is my considered judgement that the presence of Kashmir in the Union of India has been the major factor in stabilising relations between the Hindus and the Muslims of India. Gandhiji was not wrong when he uttered words before his death which paraphrases: 'I lift up mine eyes unto the hills, from whence cometh my help.'

As I have said before, we must consider the question of accession with an open mind, and not let our personal prejudice stand in the way of a balanced judgement. I will now invite you to evaluate the alternative of accession to Pakistan.

The most powerful argument which can be advanced in her favour is that Pakistan is a Muslim State, and a big majority of our people being Muslims, the State must accede to Pakistan. This claim of being a Muslim State is of course only a camouflage. It is a screen to dupe the common man, so that he may not see clearly that Pakistan is a feudal State in which a clique is trying by these methods to maintain itself in power. In addition to this, the appeal to religion constitutes a sentimental and a wrong approach to the question. Sentiment has its own place in life, but often it leads to irrational action. Some argue, as a supposedly natural corollary to this, that on our acceding to Pakistan our annihilation or survival depends. Facts have disproved this. Right-thinking men would point out that Pakistan is not an organic unity of all the Muslims in the sub-continent. It has, on the contrary, caused the dispersion of the Indian Muslims for whose benefit it was claimed to have been created. There are two Pakistans at least a thousand miles apart from each other. The total population of Western Pakistan, which is contiguous to our State, is hardly 25 million, while the total number of Muslims resident in India is as many as 40 million. As one Muslim is as good as

another, the Kashmiri Muslims, if they are worried by such consideration, should choose the 40 millions living in India.

Looking at the matter too from a more modern political angle, religious affinities alone do not and should not normally determine the political alliances of States. We do not find a Christian bloc, a Buddhist bloc, or even a Muslim bloc, about which there is so much talk nowadays in Pakistan. These days economic interests and a community of political ideals more appropriately influence the policies of States.

We have another important factor to consider, if the State decides to make this the predominant consideration. What will be fate of the one million non-Muslims now in our State? As things stand at present, there is no place for them in Pakistan. Any solution which will result in the displacement or the total subjugation of such a large number of people will not be just or fair, and it is the responsibility of this House to ensure that the decision that it takes on accession does not militate against the interests of any religious group.

As regards the economic advantages, I have mentioned before the road and river links with Pakistan. In the last analysis, we must, however, remember that we are not concerned only with the movement of people but also with the movement of goods and the linking up of markets. In Pakistan, there is a chronic dearth of markets for our products. Neither, for that matter, can it help us with our industrialisation, being itself industrially backward.

On the debit side we have to take into account the reactionary character of its politics and State policies. In Pakistan, we should remember that the lot of the State's subjects has not changed and they are still helpless and under the heels of their Rulers, who wield the same unbridled power under which we used to suffer here. This clearly runs counter to our own aspirations for freedom.

5 November 1951

Source: Secret Documents on India's Foreign Policy and Relations, 1947-72, Vol. I, A. Appadorai, 1982.

APPENDIX XXII

The Delhi Agreement, 1952

After the Constituent Assembly of the State had taken important decisions referred to immediately above, it was deemed necessary to receive the Concurrence of the Indian Government. Accordingly, the representatives¹ of Kashmir Government conferred with the representatives of the Indian Government and arrived at an arrangement. This arrangement was later on known as the "Delhi Agreement, 1952". The main features of this agreement were :

- (i) in view of the uniform and consistent stand taken up by the Jammu and Kashmir Constituent Assembly that sovereignty in all matters other than those specified in the Instrument of Accession continues to reside in the State, the Government of India agreed that, while the residuary powers of legislature vested in the Centre in respect of all States other than Jammu and Kashmir, in the case of the latter they vested in the State itself;
- (ii) it was agreed between the two Governments that in accordance with Article 5 of the Indian Constitution, persons who have their domicile in Jammu and Kashmir shall be regarded as citizens of India, but the State legislature was given power to make laws for conferring special rights and privileges on the 'State subjects' in view of the 'State Subject Notifications of 1927 and 1932: the State legislature was also empowered to make laws for the 'State Subjects' who had gone to

1. The Kashmir delegation was headed by Mr. M.A. Beg, the then Revenue Minister. (Notification No. 1-L 84, dated 20th April, 1927 read with State Notification No. 13-L, dated 27th June 1932.

Pakistan on account of the communal disturbances of 1947, in the event of their return to Kashmir;

- (iii) as the President of India commands the same respect in the State as he does in the other Units of India, Articles 52 to 62 of the Constitution relating to him should be applicable to the State. It was further agreed that the power to grant reprieves, pardons and remissions of sentences etc., would also vest in the President of India;
- (iv) the Union Government agreed that the State should have its own flag² in addition to the Union flag, but it was agreed by the State Government that the State flag would not be a rival of the Union flag; it was also recognised that the Union flag should have the same status and position in Jammu and Kashmir as in the rest of India, but for historical reasons connected with the freedom struggle in the State, the need for continuance of the State flag was recognised;³
- (v) there was complete agreement with regard to the position of the Sadar-i-Riyasat; though the Sadar-i-Riyasat was to be elected by the State Legislature, he had to be recognised by the President of India before his installation as such; in other Indian States the head of the State was appointed by the President and was as such his nominee but the person to be appointed as the Head, had to be a person acceptable to the Government of that State; no person who is not acceptable to the State Government can be thrust on the State as the Head. The difference in the case of Kashmir lies only in the fact that Sadar-i-Riyasat will in the first place be elected by the State legislature itself instead of being a nominee of the Government and the President of India.

2. Throughout India there is only one flag and Kashmir is the only State which has its own flag in addition to the Union flag.
3. It is not a written law but it is an accepted convention in India.

With regard to the powers and functions of the Sadar-i-Riyasat the following argument was mutually agreed upon:

- "(a) the Head of the State shall be a person recognised by the President of the Union on the recommendations of the Legislature of the State;
- (b) he shall hold office during the pleasure of the President;
- (c) he may, by writing under his hand addressed to the President, resign his office;
- (d) subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office;
- (e) provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office";
- (vi) with regard to the fundamental rights, some basic principles agreed between the parties were enunciated; it was accepted that the people of the State were to have fundamental rights. But in view of the peculiar position in which the State was placed, the whole chapter relating to 'Fundamental Rights' of the Indian Constitution could not be made applicable to the State, the question which remained to be determined was whether the chapter on fundamental rights should form a part of the State Constitution or of the Constitution of India as applicable to the State;
- (vii) with regard to the jurisdiction of the Supreme Court of India, it was accepted that for the time being, owing to the existence of the Board of Judicial Advisers in the State, which was the highest judicial authority in the State, the

- Supreme Court should have only appellate jurisdiction;
- (viii) there was a great deal of discussion with regard to the "Emergency Powers"; the Government of India insisted on the application of Article 352, empowering the President to proclaim a general emergency in the State; the State Government argued that in exercise of its powers over defence (item 1 on the Union List), in the event of war or external aggression, the Government of India would have full authority to take steps and proclaim emergency but the State delegation was, however, averse to the President exercising the power to proclaim a general emergency on account of internal disturbances.

Source: Justice Dr. A.S. Anand, Constitutional Developments in J&K.

APPENDIX XXIII

Tashkent Declaration, 10 January 1966

Text of the Tashkent Declaration on 10 January 1966 by the Prime Minister of India and the President of Pakistan. The initiative for a meeting of the Prime Minister of India and the President of Pakistan at Tashkent was taken by Kosygin, Chairman of the Council of Ministers of the U.S.S.R. Swaran Singh, Minister of External Affairs, had said that Kosygin 'not only sponsored the idea of the Conference, but also at all stages, and particularly when difficulties arose, acted as a messenger of peace and helped to resolve all obstacles. He did not propose, much less impose, any particular solution. Yet, without his good offices, the Tashkent Declaration could not have taken shape.'

The Prime Minister of India and the President of Pakistan, having met at Tashkent and having discussed the existing relations between India and Pakistan, hereby declare their firm resolve to restore normal and peaceful relations between their countries and to promote understanding and friendly relations between their peoples. They consider the attainment of these objectives of vital importance for the welfare of 600 million people of India and Pakistan.

I

The Prime Minister of India and the President of Pakistan agree that both sides will exert all efforts to create good neighbourly relations between India and Pakistan in accordance with the United Nations Charter. They reaffirm their obligation under the Charter not to have recourse to force and to settle their disputes through peaceful means. They considered that the interests of peace in their region and particularly in the Indo-Pakistan sub-continent and, indeed, the interests of the peoples of India and Pakistan

were not served by the continuance of tension between the two countries. It was against this background that Jammu and Kashmir was discussed, and each of the sides set forth its respective position.

II

The Prime Minister of India and the President of Pakistan have agreed that all armed personnel of the two countries shall be withdrawn not later than 25 February 1966 to the positions they held prior to 5 August 1965, and both sides shall observe the cease-fire terms on the cease-fire line.

III

The Prime Minister of India and the President of Pakistan have agreed that relations between India and Pakistan shall be based on the principle of non-interference in the internal affairs of each other.

IV

The Prime Minister of India and the President of Pakistan have agreed that both sides will discourage any propaganda directed against the other country, and will encourage propaganda which promotes the development of friendly relations between the two countries.

V

The Prime Minister of India and the President of Pakistan have agreed that the High Commissioner of India to Pakistan and the High Commissioner of Pakistan to India will return to their posts and that the normal functioning of diplomatic missions of both countries will be restored. Both Governments shall observe the Vienna Convention of 1961 on Diplomatic Intercourse.

VI

The Prime Minister of India and the President of Pakistan have agreed to consider measures towards the restoration of economic and trade relations, communications, as well as cultural exchanges between India and Pakistan, and to take measures to implement the existing agreements between India and Pakistan.

VII

The Prime Minister of India and the President of Pakistan have agreed that they give instructions to their respective authorities to carry out the repatriation of the prisoners of war.

VIII

The Prime Minister of India and the President of Pakistan have agreed that both the sides will continue the discussion of questions relating to the problems of refugees and evictions/illegal immigrations. They also agreed that both sides will create conditions which will prevent the exodus of people. They further agreed to discuss the return of the property and assets taken over by either side in connection with the conflict.

IX

The Prime Minister of India and the President of Pakistan have agreed that the sides will continue meetings both at the highest and at other levels on matters of direct concern to both countries. Both sides have recognised the need to set up joint Indian-Pakistani bodies which will report to their Governments in order to decide what further steps should be taken.

* * * * *

The Prime Minister of India and the President of Pakistan record their feelings of deep appreciation and

gratitude to the leaders of the Soviet Union, the Soviet Government and personally to the Chairman of the Council of Ministers of the U.S.S.R. for their constructive, friendly and noble part in bringing about the present meeting which has resulted in mutually satisfactory results. They also express to the Government and friendly people of Uzbekistan their sincere thankfulness for their overwhelming reception and general hospitality.

They invite the Chairman of the Council of Ministers of the U.S.S.R. to witness this Declaration.

10 January 1966

Source: Secret Documents on India's Foreign Policy and Relations, 1947-72, Vol. I, A. Appadorai, 1982.

APPENDIX XXIV

After Pakistan was decisively defeated by India in December 1971, a summit meeting between President Bhutto and (Mrs) Indira Gandhi was arranged at Simla from 28 June 1972; the summit meeting lasted five days and an agreement on bilateral relations was signed at 0.40 a.m. on 3 July 1972. The text of the agreement is given in this document.

The Government of India and the Government of Pakistan are resolved that the two countries put an end to the conflict and confrontation that have hitherto marred their relations and work for the promotion of friendly and harmonious relationship and the establishment of durable peace in the sub-continent, so that both countries may henceforth devote their resources and energies to the pressing task of advancing the welfare of their people.

In order to achieve this objective, the Government of India and the Government of Pakistan have agreed as follows:

(i) That the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries.

(ii) That the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation and both shall prevent the organisation, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations.

(iii) That the prerequisite for reconciliation, good neighbourliness and durable peace between them is a commitment by both the countries to peaceful co-existence, respect for each other's territorial integrity and sovereignty

and non-interference in each other's internal affairs, on the basis of equality and mutual benefit.

(iv) That the basic issues and causes of conflict which have bedevilled the relations between the two countries for the last 25 years shall be resolved by peaceful means.

(v) That they shall always respect each other's national unity, territorial integrity, political independence and sovereign equality.

(vi) That in accordance with the Charter of the United Nations, they will refrain from the threat or use of force against the territorial integrity or political independence of each other.

Both governments will take all steps within their power to prevent hostile propaganda directed against each other. Both countries will encourage the dissemination of such information as would promote the development of friendly relations between them.

In order progressively to restore and normalise relations between the two countries step by step, it was agreed that:

(i) Steps shall be taken to resume communications, postal, telegraphic, sea, land including border posts, and air links including overflights.

(ii) Appropriate steps shall be taken to promote travel facilities for the nationals of the other country.

(iii) Trade and co-operation in economic and other agreed fields will be resumed as far as possible.

(iv) Exchange in the fields of science and culture will be promoted.

In this connection delegations from the two countries will meet from time to time to work out the necessary details.

In order to initiate the process of the establishment of durable peace, both the Governments agree that:

(i) Indian and Pakistani forces shall be withdrawn to their side of the international border.

(ii) In Jammu and Kashmir, the line of control resulting from the cease-fire of December 17, 1971 shall be respected by both sides without prejudice to the recognised position of either side. Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretations.

Both sides further undertake to refrain from the threat or the use of force in violation of this line.

(iii) The withdrawals shall commence upon entry into force of this agreement and shall be completed within a period of 30 days thereof.

This agreement will be subject to ratification by both countries in accordance with their respective constitutional procedures, and will come into force with effect from the date on which the instruments of ratification are exchanged.

Both Governments agree that their respective heads will meet again at a mutually convenient time in the future and that, in the meanwhile, the representatives of the two sides will meet to discuss further the modalities and arrangements for the establishment of durable peace and normalisation of relations, including the question of repatriation of prisoners of war and civilian internees, a final settlement of Jammu and Kashmir and the resumption of diplomatic relations.

Source: Secret Documents on India's Foreign Policy and Relations, 1947-72, Vol. I, A. Appadorai, 1982.

APPENDIX XXV

Kashmir Accord of 13 November, 1974

The state of Jammu and Kashmir, which is a constituent unit of the Union of India, shall, in its relations with the Union, continue to be governed by Article 370 of the Constitution of India.

The residuary powers of legislation shall remain with the State, however, Parliament will continue to have power to make laws relating to the prevention of activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession of a part of the territory of India or secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution.

Where any provision of the Constitution of India had been applied to the State of Jammu and Kashmir with adaptations and modifications, such adaptations and modifications can be altered or repealed by an order of the President under Article 370, each individual proposal in this behalf being considered on its merits; but provisions of the Constitution of India already applied to the State of Jammu and Kashmir without adaptation or modification are unalterable.

With a view to assuring freedom to the State of Jammu and Kashmir to have its own legislation on matters like welfare measures, cultural matters, social security, personal law, and procedural laws, in a manner suited to the special conditions in the State, it is agreed that the State Government can review the laws made by Parliament or extended to the State after 1953 on any matter relatable to the Concurrent List and may decide which of them, in its opinion, needs amendment or repeal. Thereafter, appropriate steps may be taken under Article 254 of the Constitution of India. The grant of President's assent to such legislation

would be sympathetically considered. The same approach would be adopted in regard to laws to be made by Parliament in future under the Proviso to clause 2 of that Article. The State Government shall be consulted regarding the application of any such law to the State and the views of the State Government shall receive the fullest consideration.

As an arrangement reciprocal to what has been provided under Article 368, a suitable modification of that Article as applied to the State should be made by Presidential Order to the effect that no law made by the Legislature of the State of Jammu and Kashmir, seeking to make any change in or in the effect of any provision of the Constitution of the State of Jammu and Kashmir relating to any of the undermentioned matters, shall take effect unless the Bill, having been reserved for the consideration of the President, receives his assent; the matters are:

- (a) the appointment, powers, functions, duties, privileges, and immunities of the Governor; and
- (b) the following matters relating to Election, namely, the superintendence, direction and control of Elections by the Election Commission of India, eligibility for inclusion in the electoral rolls without discrimination, adult suffrage and composition of the Legislative Council, being matters specified in sections 138, 139, 140 and 50 of the Constitution of the State of Jammu and Kashmir.

No agreement was possible on the question of nomenclature of the Governor and the Chief Minister and the matter is therefore remitted to the principals.

Sd/- Mirza Mohammad Afzal Beg

Sd/- G. Parthasarathi

After signing the documents, Mirza Mohammad Afzal Beg wrote the acknowledgement letter to Mr. G. Parthasarathi on the same day, 13 November, 1974.

Camp New Delhi,
November 13, 1974

Dear Shri Parthasarthy,

I have today signed the document containing the points on which we have reached agreement.

As you may recall, in the course of discussions we had on the various issues, I made proposals regarding the following matters:

- (i) The provisions relating to the fundamental rights to be incorporated in the State Constitution.
- (ii) The superintendence, direction and control over elections to the State Legislature by the Election Commission should be removed.
- (iii) Article 356 should be modified to require the consent of the State before an order is issued thereunder, or some similar safeguard should be provided.

After prolonged discussions you did not agree to these proposals.

Kindly acknowledge receipt.

Yours Sincerely,
(Sd) Mirza Mohammad Afzal Beg

Shri G. Parthasarthy
31, Aurangzeb Road
New Delhi.

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He was the founding member and First Director of Legal Aid Clinic of the Faculty of Law, University of Jammu. He is also the founding member of the Association of All India Law Teachers Legal Aid Clinic Association. Professor Bhatia had been associated with CILAS Programme on Clinical Legal Education. Professor Bhatia was invited by the International Commission of Jurists, Geneva, to its seven days Seminar on Law Schools and their Role in the Rendition of Legal Services to the Poor and other Disadvantaged Groups of the Society in Asia.

Professor Bhatia took active part in the programme of intensive training of the Tenth Session of the International Training Centre for University Human Rights Teaching held at International Institute of Human Rights, Strasbourg, France. He designed teaching materials of International and Comparative Law of Human Rights.

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